

104

PROPERTY RESTITUTION,
COMPENSATION, AND
PRESERVATION:
COMPETING CLAIMS
IN POST-COMMUNIST EUROPE

Y 4. SE 1:104-2-15

Property Restitution, Compensation,...

HEARING
BEFORE THE
COMMISSION ON SECURITY AND
COOPERATION IN EUROPE
ONE HUNDRED FOURTH CONGRESS
SECOND SESSION

JULY 18, 1996

Printed for the use of the
Commission on Security and Cooperation in Europe
[CSCE 104-2-15]



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PROPERTY RESTITUTION, COMPENSATION, AND PRESERVATION: COMPETING CLAIMS IN POST-COMMUNIST EUROPE

THURSDAY, JULY 18, 1996

COMMISSION ON SECURITY AND COOPERATION IN EUROPE

Washington, DC.

The Commission met, pursuant to adjournment, at 10:05 a.m., in room 2255, Rayburn House Office Building, Honorable Christopher H. Smith, Chairman of the Commission, presiding.

Mr. SMITH. The Commission will come to order.

Today the Helsinki Commission takes up one of the most challenging issues confronting post-Communist societies in the OSCE region: How to right the wrongs committed by former totalitarian regimes. More is at stake here than just a desire for cathartic healing. How governments deal with past injustices is usually a telling indicator of their commitment to ensure that the same injustices do not occur again.

The wrongdoing inflicted by the regimes of the Eastern Bloc came in many forms and shapes, and accountability for these crimes may, in the end, also come in many forms. In today's hearing we hope to begin our examination of this subject by focusing on one specific form of abuse perpetrated over the past several decades: the wrongful confiscation of property.

At the end of World War II, Europe was faced with a land grotesquely transformed from the prewar period: tens of millions of people who had died; millions of displaced persons and refugees; landscapes razed by bombing; and whole cities destroyed. While Western countries moved to rebuild and to seek accountability and reparations from Axis powers, East European countries traveled a different path. There, countries slipped into Communist control, and reckoning with the past became a tool of the state.

In some places, such as Hungary, the government was required by the 1947 Paris Peace Treaty to make restitution of Jewish property, but the Communists ignored their obligations. Not only was justice denied for Holocaust survivors, but Communist regimes perpetrated their own brand of injustice and, in fact, were infamous for their complete disregard for private property, for nationalizing factories, for collectivizing agriculture, and for generally stealing property on a discriminatory and arbitrary basis, usually without compensation at all, let alone compensation that was just, fair, or timely.

The establishment of democratically elected governments in most Central and Eastern European countries after 1990 has sparked new hope that the people in this region would be able to address and redress wrongs committed decades ago, including the wrongful

seizure of private and communal property. In many countries, this has entailed a painful examination of individual and national responsibilities.

Unfortunately, efforts to return property to former owners thus far have been uneven and often unsuccessful, with practices varying from country to country, often stymied by complex more and legal considerations. No country has crafted a model law, and every country that has adopted a restitution or compensation law has some basis upon which it could be criticized.

I realize that extremely complex subjects such as this raise questions of international law and questions of fundamental fairness. I look forward to hearing from our very distinguished panelists, our witnesses today, as to what steps can be taken now to permit the victims of Nazi persecution as well as those who fled Communist persecution after World War II to bring claims for compensation and restitution today.

Our panel of witnesses includes two distinguished people who may know more about this subject than any other two people in Washington, or anywhere else for that matter.

Our first speaker this morning will be Delissa Ridgway, chair of the U.S. Foreign Claims Settlement Commission. The Foreign Claims Settlement Commission is an independent quasi-judicial agency within the U.S. Department of State. Its primary mission is the adjudication of claims of U.S. citizens against foreign governments. Prior to her appointment to this post by President Clinton, Ms. Ridgway was a member of the international law practice group of Shaw, Pittman, Potts, and Trowbridge. I welcome Delissa to this panel today.

Our second witness this morning is Stuart E. Eizenstat, Under Secretary of Commerce for International Trade. Mr. Eizenstat had previously served as U.S. Ambassador to the European Union in Brussels and both then and in his current position also served as the U.S. special envoy on property claims in Central and Eastern Europe. In that capacity, he has worked tirelessly to bring attention to the important subject that we are discussing today.

Mr. Under Secretary, I commend you for your initiatives in that area. This is, as I said, a very vexing and complex area, where even angels, it would seem, fear to tread.

I will make two additional comments about the scope of our hearing today. First of all, Under Secretary Eizenstat has appeared before the Senate Banking Committee, chaired by Mr. D'Amato, and in that setting has already addressed questions related to Jewish assets held by Swiss banks at the end of World War II.

Second, if there is no objection, I will include in the record some of the materials related to the issue of preservation of monuments and cultural diversity, specifically a paper prepared by Phyllis Myers, a non-governmental expert on this subject with State Resource Strategies. The fate of historic and cultural sites is very much related to the issues we will discuss in our hearing, and while we do not have time to cover this subject in depth today, it deserves, I think, to be reflected in the record.

Ms. Ridgway, we will begin with you.

STATEMENT OF DELISSA RIDGWAY

Ms. RIDGWAY. Thank you very much, Mr. Chairman.

The Foreign Claims Settlement Commission appreciates the opportunity to appear before you today to discuss its role in the resolution of property claims in post-Communist Central and Eastern Europe. The Commission is an independent, quasi-judicial Federal agency within the Department of Justice, operating at the intersection of international law and foreign policy.

Our primary mission is to adjudicate property claims by U.S. nationals, both individuals and corporations, against foreign governments. By statute, Commission decisions are conclusive on all questions of fact and law and are not subject to review by any other government official, department or agency, or by any court by mandamus or otherwise. The claims the Commission adjudicates generally are for losses that resulted either from nationalization of property by foreign governments or for damage to and loss of property in military operations during World War II.

The Commission consists of a chair and two Commissioners, together with a small staff of legal and administrative personnel. Commissioner Lacey is with me here today at the table. The Commission and its predecessors, the International Claims Commission and the War Claims Commission, have had a distinguished 48-year history. Those nearly 50 years of experience include the successful completion of 41 claims programs involving the adjudication of more than 660,000 claims and the issuance of awards in excess of \$3 billion.

The Commission is presently adjudicating the claims of U.S. nationals against Albania for expropriations of real and personal property by the former Communist regime that took power in that country at the end of World War II.

In addition, just last month the Commission announced the commencement of a Holocaust claims program to adjudicate the claims of persons who were U.S. citizens and who were interned in Nazi concentration camps or under comparable conditions. That program implements a September 1995 agreement between the United States and Germany related to the celebrated case of Holocaust survivor Hugo Princz.

The Commission is also presently registering claims against Iraq in anticipation of legislation that would authorize Commission adjudication of the billions of dollars worth of outstanding claims against that country.

Other Commission programs have adjudicated claims against countries such as Iran, Cuba, China, Vietnam, Ethiopia, Egypt, Panama, and Italy. But a large number of the Commission's claims programs have involved claims for takings by Communist regimes in Central and Eastern Europe, the subject that brings us here today.

The claims that the Commission adjudicates are espousable claims. This concept of espousal is one of the key concepts in the legal framework of international claims. Under international law and practice, claims between a national of one country and a foreign state are deemed to be claims between the two countries which those two sovereigns may settle. Accordingly, the government of the United States has the discretion in certain conditions

to take up, or espouse, the claims of one of its nationals against a foreign government for conduct that violates international law. This discretion is vested in the president and exercised on his behalf by the secretary of state—for example, by the negotiation of government-to-government settlement agreements that settle a block of claims in exchange for a lump-sum payment from the other government to the United States.

There's an important caveat, however. It's a universally accepted principle of international law that a state does not have the right to ask another state to pay compensation to it for losses or damages sustained by persons who were not its citizens at the time of the loss or damage. In other words, it's not enough for a claimant to be a U.S. national at the time of espousal. To have his claim espoused by the United States, the injured person also must have been a U.S. national at the time the taking occurred.

The United States, therefore, cannot espouse the claim of one who was an Albanian citizen at the time his property was expropriated by the Hoxha regime, even if that person is now a U.S. citizen. As a general rule, the remedies available to such a person would be those available under the domestic law of Albania.

This fundamental tenet of international law, which applies with equal force to all countries, is sometimes, we find, very difficult for aggrieved U.S. citizens to accept.

The Commission works closely with the Department of State in the handling of claims that are espoused or may be espoused. We get jurisdiction to adjudicate blocks of claims either through Congress via legislation or by government-to-government settlement agreement negotiated by the State Department.

The developments of recent years toward democracy and market economies in the former Soviet bloc have renewed interest in the Commission's claims programs for takings by former Communist regimes in Central and Eastern Europe. The Commission's programs involving Yugoslavia, the Soviet Union, Hungary, Romania, Bulgaria, Czechoslovakia, Poland, and East Germany are summarized in my written statement beginning at page 9.

I limit my remarks here to a few observations about the Commission's ongoing Albanian claims program, a Commission survey of claims against the Baltic countries conducted a few years ago, and several initiatives that have been undertaken by the Commission in conjunction with the Department of State to assist those U.S. nationals participating in other countries' domestic claims programs.

Albania is the most recent formerly Communist country to settle claims with the United States. The two countries agreed to a settlement of \$2 million in April of last year. The Commission is now adjudicating claims covered by that agreement. To date, we've received approximately 300 claims, many of which date back to 1944 or 1945.

The Albanian claims program starkly illustrates the challenges of adjudicating claims for takings by a Communist regime, particularly when the claims are quite old.

For example, documentary proof of property ownership is non-existent in many cases. Property recordation systems were not well developed in Albania in the 1940's, and ownership of property fre-

quently was not recorded. What records did exist often were destroyed when the Hoxha regime came into power and ownership of private property was abolished. In many cases there are competing claims to the same property. Laws on matters such as inheritance, restitution, compensation, and privatization are unclear or contradictory.

Establishing the value of property at the time of taking is also problematic. Ordinarily, land values would be established by reference to the purchase and sale of comparable property, but there was little market in property in Albania before the Communists. Property was generally passed from one generation to the next through a family. Sales to third parties were relatively rare. Then, of course, after the Communists came into power, there was no market whatsoever because private ownership of property was abolished.

There are also unconfirmed reports of corrupt officials allegedly willing to forge land records or decide claims in favor of those offering bribes. Indeed, we've been cautioned to be suspicious of all documentation from Albania.

And finally, communication is poor between the central government in Tirana and district officials located through the country. The result is a widespread lack of information about the domestic program and an inability on the part of all to obtain information from district-level officials about the ownership of specific parcels of property in that country.

We are working through these challenges, however, and expect to complete the Albanian claims program in early 1997. At that time, we will certify compensable claims to the Treasury Department for payment from the \$2 million settlement fund if the monies are available. To date, however, the Albanian Government has not made the necessary arrangements for the establishment of the settlement fund pursuant to the agreement, and this is a continuing concern.

Now I'd like to speak briefly about the claim surveys.

The April 1995 agreement between the United States and Albania was predicated at least in part on a survey of potential claims against Albanian that the Foreign Claims Settlement Commission conducted in 1992. Also in 1992, at the request of the State Department, the Commission surveyed potential claims of U.S. nationals against the governments of the Baltic countries—Estonia, Latvia, and Lithuania—in preparation for normalization of diplomatic relations with those countries.

The survey identified a small number of potentially valid claims which we reported to the State Department. Ultimately, the State Department decided to leave resolution of those claims to the domestic programs in the respective Baltic countries, although a small portion of Estonian and Latvian assets in the United States were temporarily blocked as a bargaining chip to help ensure that U.S. claimants' rights to pursue their claims in those countries were respected.

No similar surveys of potential claims have been conducted with respect to the other former constituent republics of the Soviet Union, but it's probable that U.S. nationals have outstanding claims against at least some of those countries.

Although the work of the Commission focuses on espousable claims, we have from time to time undertaken various initiatives in conjunction with the State Department to assist those who were not U.S. nationals at the time of their losses as they seek restitution or compensation through domestic claims programs administered by post-Communist governments in Central and Eastern Europe.

For example, the Commission, together with the State Department, conducted a public information campaign to educate potential claimants about restitution laws enacted in Germany, Czechoslovakia, and Albania in 1990, 1991, 1992, and 1993.

Another example is the Foreign Claims Settlement Commission's provision of documentation to individuals pursuing claims under Czech and Hungarian restitution and compensation laws to enable them to prove their eligibility to participate in the domestic claims programs in those countries.

Another noteworthy development is the new provision included for the first time in the U.S.-German and U.S.-Albania settlement agreements. That provision obligates those governments to afford U.S. nationals the same rights afforded nationals of those governments to pursue and receive compensation and restitution or any other remedy available under the domestic claims procedures. In this way, the State Department simultaneously achieved the settlement of the espousable claims and used its leverage to seek to ensure even-handed treatment of those U.S. nationals whose claims were not espousable. This is an important achievement.

It's difficult to know whether this new provision is making a real difference, however, in ensuring the even-handed treatment of U.S. citizens pursuing their claims in Albania and Germany. The Commission has received some anecdotal reports of problems from U.S. citizens participating in the domestic program in Albania. However, the U.S. embassy in Tirana has advised us that it has seen no evidence that U.S. citizens filing claims in that domestic program are being treated unfairly.

The Foreign Claims Settlement Commission has a long history of promoting the international rule of law by providing a forum for the adjudication of the claims of U.S. nationals against foreign governments. Through the work of the Commission and its predecessors, virtually all espousable claims arising from Communist takings after World War II have been adjudicated and significant compensation has been paid. The FCSC would be pleased to provide its expertise to this Commission and to Under Secretary Eizenstat as they address property claims in post-Communist Central and Eastern Europe and would welcome the continued support of both in the fulfillment of the mission of the Foreign Claims Settlement Commission.

That concludes my statement, Mr. Chairman. I'll be happy to answer any questions that you or your colleagues may have.

Mr. SMITH. Ms. Ridgway, thank you for your fine statement and for your very good work on the Commission.

Ms. RIDGWAY. Thank you very much.

Mr. SMITH. Under Secretary Eizenstat, would you now make your presentation? Also, both of your full written statements will be made a part of the record.

STATEMENT OF STUART E. EIZENSTAT

Mr. EIZENSTAT. Thank you, Mr. Chairman. I appreciate your making my full statement a part of the record, and I particularly appreciate the leadership that you and Chairman D'Amato and other members of the Commission have provided in this particular area. Your continued interest and your support in the restitution process is much appreciated and will help, I am sure, to reach a fair resolution of the tragic injustices that have brought us together here.

My task as special envoy has been to promote a just, transparent, and fair resolution of the claims for the properties confiscated or stolen by the Nazis and their sympathizers or by the Communist governments in Central and Eastern Europe. In the past year, I've been to 11 countries in Central and Eastern Europe, as well as to Germany and Switzerland, trying to pave the way for a successful resolution of restitution issues.

I traveled to Germany because of its potential pivotal role in compensating those survivors of enforced ghettos or prison camps who have not been compensated because of a historical irony, which was that the German Government has paid some 80 billion to 100 billion Deutsche marks in compensation, which continues, to those survivors of the Holocaust who have emigrated to the West. But those who were trapped behind the Iron Curtain received nothing during the cold war period because of the risk that any money flowing through Communist government hands would never get to the victims. The problem is that we are now 6 to 7 years after the fall of communism, and by and large, these survivors remain uncompensated.

The other issue is Switzerland, to which you previously referred, and the Swiss bank account issue is something which I have addressed in previous testimony.

On my many trips to the region, I have emphasized a number of central points:

First is the significance that the U.S. Government attaches to this issue, the importance of resolving property claims in ways that are just, fair, and nondiscriminatory, and our willingness to serve as a catalyst to close this difficult chapter of World War II history.

Second, I would emphasize the need for cooperation by all the parties. We do not seek to dictate a solution or to be a negotiating partner. Rather, we urge governments to address the question of promoting restitution and compensation of both communal and private properties in ways that meet the expectations of local communities and are credible to international organizations. We also seek to promote solutions that are fair to U.S. citizens who have had private property confiscated during the Nazi and Communist eras.

Third, although we understand and are sensitive to the financial constraints of Central and Eastern European governments as they struggle to reform their post-Communist economies, these new democracies should avail themselves of this historic opportunity to stand against the enduring evils of Nazi and Communist persecution. We have also stressed that a critical priority should be assistance for those aging and destitute survivors who are victims of the historic anomaly to which I have just referred. Again, of those in the East who survived both Holocaust and Communist tyranny,

many remain largely uncompensated. They're desperately in need of income. They are by definition old, and they ought not live out the balance of their lives in the same degradation that they have suffered until today.

The subject of my work as special envoy is focused on the claims of U.S. citizens and others whose property was confiscated by the Nazis and their allies or afterward by the Communists, and these are divisible into three categories, Mr. Chairman.

The first are claims for public or communal property; that is, property owned by the Jewish community. However, this also rounds to the benefit, if I may say so, of the Catholic communities and the Orthodox communities in these areas. This property includes synagogues, cemeteries, schools, and hospitals—property that was owned communally.

Second are claims for private property by survivors of heirs.

Third, perhaps the most difficult issues are claims for heirless or abandoned property.

Our initial focus has frankly been on communal property, because the hope has been that, by stimulating action here, we would build momentum in other categories. I want to have raised the issue of private property in all of the countries to which I have gone, but the emphasis clearly has been on communal property.

In many cases the countries I have visited have begun returning at least certain types of communal property. A number are setting up restitution foundations in cooperation with local and international Jewish organizations to organize the restitution process and manage the communal properties that have been returned.

In much of the work that I have done, I have been greatly benefited by the work of our embassies and Ambassadors at post, the Department of State, the World Jewish Restitution Organization, the World Jewish Congress and Jewish Agency, local Jewish organizations, many of the governments in Central Europe, and by the Congress. Together we are, in fact, making progress.

The return of communal property presents a number of difficulties. Some of the countries I have visited, Mr. Chairman, are returning state-held communal property, but not that property which may be controlled by local municipalities. Unfortunately, it is the municipality property which often is the most profitable income-producing property.

Even in instances where state-held communal property is being returned, the process of restitution is often slow and complex. Furthermore, some laws or decrees call only for the return of religious communal property, making an artificial and, I think, inappropriate distinction between religious and non-religious communal property that was often not at all clear before the war.

In some cases, claimants have been required to compensate current owners, something that they find very difficult to do, or to relocate persons displaced by the return, and/or to allow current tenants to remain for lengthy periods of time.

Each of these restrictions causes difficulties and delays.

Private claims are, in many ways, even more difficult and take longer to address. Citizenship and/or residency requirements for claimants are the major stumbling blocks in most of the countries I visited. These restrictions often prohibit U.S. citizens and citizens

of other countries who suffered grievously during the Holocaust or lost their property under the Communists from regaining their family possessions and homesteads.

Even when these restrictions are not prohibitive, the claims process for individuals is often extremely complex and time-consuming due either to extensive bureaucratic requirements or inexperienced and overburdened judiciaries. All of the categories of claims that I have mentioned present complex legal questions that need to be addressed. The ability of the U.S. Government to espouse the claims of its citizens must be determined in accordance with international law on a case-by-case basis.

As Ms. Ridgway indicated, in order for the U.S. Government to formally present the claim of a U.S. citizen, the claimant must have been a citizen at the time the claim arose. The act giving rise to the claim must have been a violation of a nation's responsibility, international law, and finally, the claimant must have exhausted judicial and/or administrative remedies. Frankly, Mr. Chairman, few U.S. citizens can meet these stringent tests.

While much of the impetus for the creation of my original mission came from our recognition of the large numbers of U.S. citizens who were victims of Nazi or Communist aggression, the vast majority of these individuals were not U.S. citizens at the time of the taking. To the extent that there were espousable claims, almost all, as has been indicated, have been settled under the terms of existing agreements. Therefore, my mission has been a policy mission to urge a fair and non-discriminatory resolution of claims.

One final difficult issue that has confronted countries in Central and Eastern Europe is how to deal with the current occupants of restituted property. The guiding principle here has to be fairness, and any solution must recognize the need to provide current tenants with the means to relocate without undue hardship. In the interest of time, Mr. Chairman, I'm not going to go over the country-by-country designations which I have made here. I would, however, with your permission, like to describe the situation in Hungary.

I mention this because it is a good example of what a government can do when it puts its mind to it. The Hungarian Government has been very forward-thinking in its restitution program, and I have been impressed by their determination to resolve both communal and private property issues. It has accepted its obligations under the 1947 Paris Peace Treaty, and a 1993 Constitutional Court decision to provide fair compensation for those who lost their property in the Holocaust and afterwards is being honored.

The Hungarian approach is a positive example for other countries to follow. I'm very pleased to note, Mr. Chairman, that this very month, the Hungarian Government reached an agreement with the World Jewish Restitution Organization and the Federation of Hungarian Jewish Communities to create a new foundation to oversee Hungarian compensation and restitution of communal property for Hungarian Jewish communities. The foundation will be endowed with \$26.5 million to pay for compensation to Holocaust survivors who reside in Hungary, and that foundation will also manage the restituted property that will be returned.

The Hungarian Government implemented a property compensation program from 1991 to 1993 in which compensation coupons were distributed to claimants for the purchase of their old property, or another piece of property. There were, Mr. Chairman, no citizenship or residency requirements. Those who missed the 1993 cutoff could still file suit in the Hungarian court. If only this was the situation in other countries.

It is again an excellent model. There is still work to be done. We still have to make sure that the compensation that is promised is being paid. But our Ambassador there, Donald Blinken, deserves an enormous amount of credit. Prime Minister Horn and his government have been tremendous in this issue and deserve a great deal of praise; and the World Jewish Restitution Organization, Edgar Bronfman and the Jewish Agency have all made important contributions.

Let me conclude, Mr. Chairman, by saying that progress in every country is being made. Often, however, it has been slow, tedious, and with great difficulty. Frameworks for the return of communal property are slowly but surely being erected in most of the countries I visited. Often, it is true, these efforts are limited to the return of religious property, but it is promising that a number of governments, even with this restriction, have told me that they will interpret the term "religious" as broadly as possible.

Joint foundations are being developed by national governments, local Jewish groups, and international organizations that will serve as a repository to manage the restituted communal property restitution. With respect to private property, again, more difficulties are presented. Discriminatory citizenship and residency requirements, overly-bureaucratic claims procedures, inefficient judicial systems, and the issue of how to deal with current occupants present tremendous hurdles that we have to overcome.

Progress is being made, however, and the U.S. Government continues to express at every opportunity its sincere desire to see private claimants, wherever they may be, justly and fairly compensated for their seized and stolen property.

On a final note, I do want to say that things are moving in a positive direction on the Swiss bank account issue; and we are very fortunate to have an ambassador, Madeleine Kunin, a native of Switzerland and a very talented and brilliant individual, someone who will follow up in that process as well.

Mr. Chairman, thank you. I thank you and your staff and the members of the Commission for having this hearing and for giving us the opportunity to highlight this issue.

Mr. SMITH. Thank you very much, Mr. Under Secretary. Again, thank you for your good work on this issue and many others. We do have a vote occurring on the floor, but I will ask one brief question, and then I'll come back and hopefully other Commissioners will join me in asking additional questions.

Is there any effort being made to try to convene, whether it be an international conference or other kind of forum, that would lead to the establishment of an international standard, such as the way the ILO and others have done, especially when a problem arises that is certainly universal? Dorothy Taft, who was my staff member on the Western Hemisphere Committee, and now staff director

for the Helsinki Commission, and I have been in Nicaragua. We saw confiscated properties and knew that this is a universal problem, particularly as it relates to Communist countries.

Now Eastern and Central Europe are going through the same thing. Is there any effort to establish an international norm?

Mr. EIZENSTAT. Well, unless Ms. Ridgway is aware of any, I am not. However, your suggestion is a very interesting one. I would not want to make it in lieu of the work we are doing on a country-by-country basis, but as a supplement, the notion of trying to establish international norms, both for communal and private property, not only in the Nazi or Communist environments, but more broadly, would be a very interesting proposition and something that would be worth our work.

There is no habeas forum for this. The WTO, obviously, would not be appropriate. This is not a trade issue. The U.N. possibly could be an appropriate forum, but the U.N. has its own difficulties. The ILO tends to deal with individual labor standards rather than communal property issues, but perhaps it could be placed under that rubric. But I think it is something very much worth thinking about. It's a very constructive and creative idea and one that certainly we should give more thought to.

Ms. RIDGWAY. A very interesting idea, Mr. Chairman.

Mr. SMITH. On that note, we'll recess this hearing for a couple of minutes. I'll be right back.

Ms. RIDGWAY. Thank you.

[Recess.]

Mr. SMITH. We'll resume the hearing. Secretary Eizenstat, you wanted to begin with a comment?

Mr. EIZENSTAT. Mr. Chairman, in terms of further reflection on your very interesting suggestion of trying to develop an international set of standards and international forum, it occurs to us that one possibility would be the very Helsinki process of which, of course, your Commission is a key part. The Helsinki process, after all, is established for these types of issues.

The OSCE might possibly sponsor a conference which would involve over 50 countries, almost certainly all the ones involved here, that could explore the issue, and begin a dialog. This is only a suggestion that you might consider and a possibility, but when you are asking for possible fora, this certainly would be one potential forum for the exploration of a multilateral set of standards.

I certainly think that a multilateral set of standards is far preferable than our trying unilaterally to establish standards that might be contrary to existing international practices.

Mr. SMITH. Thank you very much, Mr. Secretary, for that very good suggestion. I think we need to put our heads together and try to develop some plan of action on that. You mentioned a moment ago that few U.S. citizens can take advantage of the foreign claims settlement process because either they were not American citizens at the time that their properties were confiscated, or they find themselves in the situation that they're not citizens in the country that did the confiscation in the first place.

Do we have any numbers—Ms. Ridgway, you might want to comment on this as well—as to how many people fall between those

cracks and how many people really are out in left field with no real recourse?

Ms. RIDGWAY. Let me answer your question this way, Mr. Chairman. There are easily thousands of individuals whose claims had to be rejected by the Foreign Claims Settlement Commission because they were in the process of becoming U.S. citizens but had not yet become U.S. citizens because of the waiting period. So we know about that group of people.

We, of course, don't know, can't express a view on the impact of the residency requirements in the domestic claims program. I would not know how many people would be captured in that group. Thank you.

Mr. EISENSTAT. We have no precise numbers, but we get a steady stream of letters to the State Department from people who have very compelling cases of actual property that they own, but who would not have been U.S. citizens at the time, and likewise, are not citizens of the particular Central European country. It may be their property, their family's property. They can make clear claim and title to it, but the assertion of that is really precluded because they fall into this big black hole which you're referring to, and because we do get a steady stream, We have gotten scores already.

One would assume that the numbers potentially could be in the thousands of people who have immediate family or relatives who have property. Just think of the number of people just in Poland alone, whose families would have had property confiscated during World War II or during the Communist era, Polish-Americans, Jewish, and Catholic. That would be a very significant number.

Mr. SMITH. In terms of determining value, we all know, even in this country, if you live inside the Beltway, there's a certain guide to the identical home that's come to be much less expensive just 40 miles out, and certainly when you're talking about decades. How is value of a home or a property, I should say, determined?

Ms. RIDGWAY. Well, I can speak to that question for the Commission. We look at the value of the property at the time of the taking plus interest, of course, and some of the ways that we look to in determining value would be purchase price, for example, where that is available as an indicator; tax value; insurance value; mortgage; and production value in the case of agricultural property. We have to be very flexible in the use of approaches, particularly where some of these Communist economies are concerned, as I was discussing with respect to Albania.

Mr. EISENSTAT. I would add simply that in most of the countries that have any kind of private property restitution, it simply depends on what they themselves have determined, under their own national laws, to pay, and that varies.

Mr. SMITH. In terms of proving prior ownership, what kind of test, especially since I have been advised that the Baltic states do keep some relatively good property records. Many of these countries are likely not to have kept them, and if they did, they might be lost, torn or tattered. How do you go about proving a claim?

Ms. RIDGWAY. Speaking for the Commission, as we discussed in our statement, this is indeed a problem in some of these countries. Albania specifically is the example that we have given in our written statement. We are very flexible in that area in terms of the evi-

dence that's accepted, and we accept a wide range of secondary types of evidence.

Occasionally there are photographs of property, contemporaneous correspondence between parties that will reflect the existence of property, tax records, or mortgage records. Sometimes it even comes down to affidavits of third parties, the village elder, court documents in the country at issue, or sometimes just the credibility of the claimant who appears before the Commission to talk about his property and the loss of that property.

Mr. SMITH. Before you answer, Mr. Secretary, how many work hours does an average claim presented to you and to the President take?

Ms. RIDGWAY. Give us a moment on that.

Mr. SMITH. OK. Mr. Secretary?

Mr. EIZENSTAT. Yes. I would just add two points. First, with respect to communal property, the World Jewish Restitution Organization and/or the Jewish Agency for Jewish communal property has been providing, in a number of countries, aid for reviewing records on communal property going back to archives. It has been our experience in most of the Central European countries, the 11 that I have visited, in the overwhelming number, the records are actually quite good, and surprisingly available for communal property.

With respect to private property, we have not had that much experience with it, but there is no reason to believe that this is an insurmountable barrier. It does take time, but records in many of these countries are surprisingly good, and they are available. The biggest burden is not the record-keeping problem. I want to emphasize that. The biggest burden is the restrictions that are imposed by the Central European governments which require citizenship and/or residency to make the claim. That's the biggest problem by far.

Ms. RIDGWAY. I would just second what Under Secretary Eizenstat just said. Even in Albania, which I think is one of the more challenging examples, even in their domestic program, the absence of documentation is a problem, but not an insurmountable one. They are finding ways to deal with it just as we are. On your earlier question concerning the amount of time it takes to process a claim, it really varies wildly. Some of them individually take as many as 50 or 60 hours.

Of course, cases that can be disposed of immediately on jurisdiction where it's very clear that the individual was not a U.S. national at the time of taking, those cases require almost no time. We occasionally have very difficult cases that present lead issues, difficult issues of law perhaps that may take considerably in excess of that. So it varies dramatically.

Mr. EIZENSTAT. One other thing, Mr. Chairman, that the Commission and the OSCE could be very valuable in doing: Let's take the example of Slovakia. Slovakia has what appears is a model law passed in 1993 for restitution; but, in Slovakia, virtually nothing happens. I don't think it is a question of ill-will on the part of the government. I have been there a couple of times.

I believe that they want to do the right thing; but their bureaucratic processes, their administrative processes, their judicial processes are so new to them in the post-Communist era, with inexpe-

rienced people, and inexperienced judges, that it simply is very frustrating to get anything done. We see this repeated time and time and time again in other countries as well. So it would be useful, again, for the Helsinki process to encourage these countries.

Now, I may just mention one other thing that has been a potential positive, but without a follow through. The European Parliament, toward the end of last year, passed a resolution in Brussels calling on all Central and Eastern European countries to develop efficient laws and processes for the restitution of confiscated property, both communal and private, and to do so as soon as possible.

Now, the importance of this goes beyond the resolution itself. Most of these countries aspire to be members of the European Union. They need to improve their private property laws and ownership laws so that they reach European norms. If we could get a more coordinated effort on the part of the European Union, this would also be helpful.

One other thing that I would like to say that could be helpful, and here again, you, Mr. Chairman, and the Commission could be very helpful. I have, frankly, been largely a one-man band. I have had this as a second job. I have put in a lot of time and a lot of effort. I have got very good support from our posts and the State Department, with its very limited resources, has been helpful. But it is, nevertheless, not a systemic process.

What I think is necessary is now to move this to a more systemic level in our relations with Central and Eastern Europe, doing so diplomatically, but when there are visits of senior officials. I last night flew to New York to have dinner with the President of Poland. But constantly, we have a steady stream of prime ministers, foreign ministers, and others who come from these countries. They come to see the Hill, they testify before the Foreign Relations Committee or they'll meet with you privately. They meet with the Secretary of State; they meet at the White House.

This issue needs to be put on the agenda so that these countries know that this is a matter that the State Department, the White House, the Congress believe to be important. That will do more than anything to push this process along. One can only beat the drum as a one-man band so often in 11 or 12 different countries. This now has again to be systematized as part of our regular dialog.

It doesn't mean it has to be the No. 1 issue that's raised, but it needs to be a talking point so that these senior ministers know that this is an issue that the Congress, the White House, the State Department continue to care about in a meaningful way.

Mr. SMITH. Is there available, through your office—and perhaps we have some of this in ours—a profile of the outstanding cases, say, for example, the Czech Republic?

Mr. EIZENSTAT. Well, we certainly have a profile of the letters that have been sent to us by individual citizens and the responses back, which by and large, refer to the distinction that Ms. Ridgway made; namely, most of these people were not U.S. citizens, obviously, at the time the confiscation occurred, either during World War II or during the Communist era. They've only since become U.S. citizens. We could easily give you a catalog of those.

Mr. SMITH. A catalog of the most up-to-date, ongoing information would make a good point. All of us have frequent contact with these diplomats and traveling parliamentarians, foreign ministers, and prime ministers. If the issue is not a talking point when they interface with members of Congress and the executive branch, except for your good work and Ms. Ridgway's, it's just not going to be an issue. The more empowered we are with information that's accurate and up-to-date, the more effective we can be.

I know this has become part of the dialog with countries like Nicaragua. It very quickly became an issue where we were talking about linking our foreign assistance to whether or not there is progress in the adjudication of these cases. In terms of who occupies these properties, does it read like a who's who of former Communist officials or is it just more random?

Mr. EIZENSTAT. No, no. This is, by and large, not a situation where a few Communist bosses are sitting in. You may have a synagogue or a religious day school that may have been converted into an apartment, and it's being occupied by tenants and owned by a particular landlord, and that's what's so difficult.

Let me give you an example in Sofia, Bulgaria. Bulgaria has, by and large, done a pretty good job on the restitution issue. There are, however, 200 private properties in Sofia, including one major hotel which the Supreme Court of that country has determined is about 49 percent owned by the Jewish community, but there are others. There are about 200 properties in Sofia.

Despite a 1992 national decree from the Prime Minister, the Mayor of Sofia simply refused to abide by the decree. Now, the new mayor, Mayor Sofianski pledged to me that he was going to change that, abide by that decree, but he has so far done nothing. In part it's because of the difficulty of finding alternative locations for the people who are in those apartments.

Now, there are solutions. One solution is to pay compensation in lieu of getting the property back, but again, these are countries that don't have big treasuries. So this is a very daunting problem. But again, it's, by and large, not a situation where some fat cat Communist boss is simply occupying it. These are often occupied by average citizens who have to have other places to live.

With respect to the implementation, I mentioned Slovakia. There are programs which are funded by AID, for example, the Commercial Law Development Program that we use throughout Central and Eastern Europe to encourage these countries to develop commercial codes, tax codes, and other laws to bring them up to Western standards, Mr. Chairman; and there's no reason why that program might not be used for purposes of upgrading their property laws as well.

In all of this, we have to recognize that time is a factor, particularly for the survivors. They're generally in their mid-70's, and there is a time urgency.

Mr. SMITH. I appreciate that. That's a very good point. We had received a complaint from Susan Benda, whose house was ripped off, stolen during the Nazi occupation. She and her brother are trying, using the 1994 Czech Restitution Law, to get some significant redress in this regard; yet now they have run into—and you alluded to this a moment ago—the parliament passed a law that on

its face looks like it is seeking to truly resolve the issue, only to run into a bureaucratic morass that just ties them up in knots.

Apparently she has to go through an expensive and cumbersome court proceeding. The Ministry of Finance, we think, are the ones who have imposed this. What can be done to help Ms. Benda and others like her? It's one thing to have a good law or what appears to be—on its face—to be a good law and quite another one to have a bureaucratic maze that one has to go through.

Mr. EIZENSTAT. Well, first, we'd be glad to look at that particular case. It would depend again on whether she was—she presumably was not a U.S. citizen at the time, and so she's subject to whatever the particular law in the Czech Republic is, and here, one has to admit to a certain feeling of sort of mixed success. The Czech Republic, in many ways, economically is at the very top of the Central European countries, per capita income, GDP growth. They have a very strong economic performance.

They've also done many positive things in the restitution area. For example, they passed, in 1991, a property restitution law covering Holocaust-related claims. In 1994, they established a one-time payment. Modest, but nevertheless, a one-time payment for Czech Holocaust victims. In that same year, Prime Minister Klaus issued a decree on the return of state-controlled Jewish communal property.

However, that is only half the glass. The other half is unfilled. The problem is that for much of the income-producing communal properties in municipal hands, you have to go mayor-by-mayor, city council-by-city council to get these back and most of the income-producing property, that is communal property that's been converted into hotels, hospitals, clinics, things that are producing income that would be very useful for the survivors to have as well as the Jewish community to rebuild its shattered roots, remain in the hands of mayors who don't want to give them up for obvious reasons.

With respect to private property, again, the frustration is that you need to be a citizen and a resident. I'm sure this is Mrs. Benda's problem. The Czech law makes it difficult even to claim dual citizenship, and it is these kind of discriminatory restrictions which, of course, the United States does not have on the ownership or claim of property and which many other countries don't, which will make it more difficult for her and others to make claims.

I suspect we have gotten more letters from Czech-Americans than perhaps any others, and it's very frustrating to have to give them bad news so often.

Mr. SMITH. Looking at the intent, the consequences of many who were wronged. Many continue to stay in that category of having been wronged. Do you sense that there was a deliberate attempt to try to make this not work, to give the appearance of being generous and trying to rectify past wrongs while not really having the tools available to make it happen?

Mr. EIZENSTAT. No. In almost every country I have gone to, I would say virtually in every country I have gone to, I have met either with the presidents, the prime ministers, the foreign ministers, other senior ministers. I think there is a genuine interest now in resolving this issue, in coming up to Western norms. They

recognize that the spotlight is on them, that they're new democracies, they want to rectify the past. Some like Hungary have gone much further than others, but countries like Estonia have done very nicely.

Even those like Slovakia, where there is a slow process, or the Czech Republic where there's this mixed record, I do believe that the senior ministers want to do the right thing, that they want to see this issue solved; but they simply lack the legal structures, the bureaucratic capability, the administrative capability, and then they do have these very restrictive laws.

Now, let me say on this, because here one has to be quite frank, on the communal property, there is a genuine desire to get this behind them and resolve it as quickly as possible in almost all countries. At the same time, there is a real fear on private property restitution, that there will be this horde of people coming in, taking their property, taking it out of the country, taking assets out of the country, displacing current residents from property.

There is a mortal fear in many of these countries, I think in particular, Poland, that this will occur; and there's no question but that on the private property side, that even senior ministers are very concerned with dealing with this issue. They're very concerned with how they're going to handle it.

Mr. SMITH. In terms of institutional churches like the Russian Orthodox church, which had taken ownership of a number of the Catholic churches in Russia and Ukraine, what has been the co-operation there?

Mr. EIZENSTAT. Well, I was in Ukraine, and there is a very significant conflict between the Orthodox, the Russian branch and the non-Russian branch of the church, over some major church properties, church properties which, by the way, are magnificent. Some of the churches there are beyond description in terms of their beauty and their value.

In one case, the monarch from one of the branches of the church died, and he was buried on the sidewalk outside one of the churches that this particular group was claiming, just, in effect, staked their claim to that particular church. So there is a great lack of co-operation. This often impedes getting Jewish communal property back because the country, like the Ukraine, doesn't want to have to deal with the political problem of sorting out the differences between the different branches of the Orthodox church.

Mr. SMITH. Let me ask both of you, are there any NGOs that are exclusively committed to this issue? What got me involved in the Nicaraguan issue initially years ago was a group called the Americans with Confiscated Properties in Nicaragua. The NGO kept very detailed accounts of people who were trying, those who succeeded, what methodology they used.

When the Nicaraguan Government came up with a compensation scheme, they were Johnny-on-the-spot with an analysis as to what was good or ill about that scheme. It seems that highly motivated NGOs who don't have portfolios of all human rights or, like yourself, just an unbelievable basket of things to carry, could be very helpful in resolving this.

Mr. EIZENSTAT. Well, I'll let Ms. Ridgway deal with her situation. From my perspective, the NGO that has solely dedicated itself to

this issue is the World Jewish Restitution Organization in terms of Jewish communal property. There is no similar NGO that I'm aware of that has committed itself solely to the return, for example, of Catholic or Orthodox church property. But the World Jewish Restitution Organization is solely in the business of dealing with the restitution issue.

It's very important, by the way, that the WJRO be represented adequately on these foundations. In Poland, for example, there is legislation now pending to create for the first time a legal process for restitution. Poland is farthest behind almost all the Central European countries in terms of even having a legal framework, but there is a desire to pass a law. The President and the Prime minister are very dedicated to it.

They want to create a foundation, but currently as the bill is drafted (it's still in committee), the foundation would be controlled only by the local Jewish community, which is a 3,000-person community of mostly aging people; and the question of their capability to manage a large amount of property coming back is doubtful. It's very important that the WJRO be included as a part of that foundation, as they are in, for example, Romania and Hungary.

The Jewish Agency doesn't spend full-time on this, but they've also been very valuable in providing assistance, particularly to the elderly survivors; and this is a very significant activity of theirs. The Joint Distribution Committee has been working very heavily with survivors and the Joint Distribution Committee, as well as an NGO that has been active here.

Ms. RIDGWAY. I would just echo what the Under Secretary said. There are a number of Jewish organizations that are playing a major role, both on persecution claims and property claims related to the Holocaust. I would add the Conference on Jewish Material Claims to that list. There are probably others that should be added that may not be devoted exclusively but are playing a major role.

There is also a professor at the University of Wisconsin, a man named David Stanfield, who has been in Albania for a number of years now. We came across his path when we were there last fall and recently met with him when he was in Washington. He is presently consulting with AID and is working very closely with the Albanian Government, working on establishing property registration procedures, recordation procedures, and those kinds of issues in that country, and he really has a wealth of knowledge on the subject.

Mr. SMITH. Thank you. In terms of the countries, as you go down the list country by country, have any of the countries set priorities for the return of property beginning first with themselves in terms of properties that they may have wrongfully taken over and to return those back either for communal purposes, or to individual private owners that lost that property?

Mr. EIZENSTAT. Well, I would say that, again, if you look at the summaries that we have made, there are a number of countries, the Czech Republic, Slovakia, Hungary, which have legal processes that are in place to deal with those properties that were confiscated. By the way, there are some countries which have recognized, Bulgaria as an example, that their Fascist governments dur-

ing the war were responsible for confiscation, and they've tried to rectify that as well.

I think again, most of these countries do recognize they have a responsibility, particularly in terms of the Communist era nationalizations, to try to return that property; but it is a very daunting task to undo 50 years of Communism and try to return properties to their rightful owners that were confiscated during the Communist era, let alone the Nazi era. So I think that they, by and large, all have a desire to do the right thing. It's a question of priorities and some, like Hungary, have simply given a higher priority to it than have others.

Mr. SMITH. Let me ask, in terms of the caseload, Ms. Ridgway, in terms of the cases resolved, how many have actually gotten properties back or its compensation in the normal route, and in those cases where someone accepts compensation but then a new law like the Czech law comes on the books or some other law that might allow them to actually get the property back, can it be reopened, or once resolved, is it a closed case?

Ms. RIDGWAY. The Foreign Claims Settlement Commission only has authority through the executive function to provide compensation pursuant to government-to-government agreements. We never are able to provide for restitution of property. That's a remedy available typically through the domestic claims program.

Mr. SMITH. Once you do provide compensation, what happens if they seek restitution?

Ms. RIDGWAY. Well, let me back up. Once a settlement agreement is concluded with a country, those claims are released. All claims within the scope of that agreement are released without regard to whether or not they have actually been raised, which makes the outreach function of the Commission very important. When an agreement is concluded, it's important to apprise everyone who falls within the scope of that agreement of the availability of compensation so that they can come in and claim within the appropriate timeframe and get compensation.

So their claim is released without regard to whether they come forward or not. Once those claims are released, there is no opportunity, unless the other government decides on an *ex gratia* basis to make it available, for them to pursue, as an alternative, a local remedy in any claims program in that particular country.

Mr. SMITH. Ms. Schlager, do you have any questions?

Ms. SCHLAGER. I would be interested in asking Under Secretary Eizenstat about a decision of the U.N. Human Rights Committee—we only learned of this decision ourselves this week, so I don't know if you would be familiar with it. But we understand that the U.N. Human Rights Committee heard a case that was brought by a number of Czech-Americans as well as some citizens of other countries regarding the Czech restitution law and these individuals were excluded because they did not have Czech citizenship, which is a requirement.

In making a decision on this case, the U.N. Human Rights Committee noted that citizenship was not an original requirement for property ownership and that many of those who were forced to leave Czechoslovakia, that is to say, the act which has led to their property confiscation, were victims of political persecution.

The Committee argued that while property rights, as such, are not covered by the International Covenant on Civil and Political Rights, a law providing for the restitution of property must do so on a non-discriminatory basis. Therefore, the committee concluded that the conditions required for restitution by the Czech Republic's law, specifically the requirement of citizenship, was discriminatory.

Now, this seemed to be a persuasive line of reasoning and I'm wondering if it is helpful to you as you examine these issues.

Mr. EIZENSTAT. Well, it's certainly something we'd like to see. I'm not aware of it, but I very much would like to see it and its line, Mr. Chairman. This is interesting, that actually when claims have been filed in a variety of courts, that in at least two or three of the countries that I have referenced in my prepared testimony, the constitutional courts have actually stricken those laws which require citizenship.

This affords an opportunity, on a country-by-country basis, to go back and get the parliaments to try to amend their laws. Those courts have generally, however, not struck down residency requirements. They have struck down citizenship requirements, and I would certainly like to compare this decision of the U.N. Human Rights Committee.

One other thought, again, when we are thinking of international fora, because I'm more and more taken by your notion of trying to find one, one other potential forum, in addition to the Human Rights Committee because they've evidently already looked into it, would be the Council of Europe. The Council of Europe has specifically a human rights focus, and many of these Central European countries are members. Some like Russia have just recently gotten in, and, if this could be one of the criteria that are followed, that would be very useful as well.

Mr. SMITH. Any others? Thank you very much for your testimony and for your answers to the questions. They're very provocative.

Mr. EIZENSTAT. We appreciate your leadership.

Mr. SMITH. We need to make this a priority much more than I think we have. Although some have been doing it—and I thank the good work of our staff on this—I can assure you I will do everything I can to try to give this a boost. As a matter of fact, earlier we were both thinking along the same lines when you talked about the resolution that had passed in the European Parliament. Perhaps it's time to send to the Congress a resolution to bring focus on this issue.

Mr. EIZENSTAT. That's certainly another possibility.

Mr. SMITH. It's not an issue.

Mr. EIZENSTAT. It had an effect when it was passed in Brussels, and that's certainly a possibility.

Mr. SMITH. OK. We'll get to work drafting a resolution right away. Hopefully we can get it through real quickly. Again, I want to thank you again for your excellent testimony and your fine work. The hearing is adjourned.

Ms. RIDGWAY. Thank you very much, Mr. Chairman.

[Whereupon at 11:30 a.m., the Commission adjourned.]

[Written inserts follow.]

APPENDIX

18 July 1996

**Senator Alfonse D'Amato
Opening Statement
Commission on Security and
Cooperation in Europe
Hearing on**

Property Restitution, Compensation, and Preservation: Competing Claims in Post-Communist Europe

Mr. Chairman:

I want to thank you for scheduling this hearing on a topic that is very important to many of my constituents. Many New Yorkers fled their homelands in central and eastern Europe during the period of Communist rule. Most of them lost everything they and their families had earned and built over many generations, a price they gladly paid as they sought the rewards of freedom for themselves and their children. With the fall of the Iron Curtain and the end of Communist tyranny, many now hope for some justice from the new, democratic governments.

Today's witnesses, Secretary Eizenstat and Chair Ridgway, are experts in the areas of European property restitution and compensation. I look forward to hearing from them about the situation in these new democracies, and to learning what we can do to help our constituents achieve some measure of justice for what was stolen from them by the Nazis and the Communists.

Decades of Communist rule have left deep and painful scars throughout central Europe and the former Soviet Union by often taking the fruits of Nazi crimes and building upon them. I believe that some form of accountability for the murders, imprisonments and expropriations committed by these former totalitarian regimes is essential for the development of truly democratic societies.

Looking at the way property restitution and compensation has been treated in central Europe, I see a lot of political "spin control," as the governments in this region want to be perceived as reform governments, governments that distinguish themselves from the previous Communist regimes by their willingness to un-do what those regimes had done. In fact, much of their behavior to date, at least concerning property restitution, undermines that image.

These governments must understand that property restitution in this region can enhance economic reform in general by convincing citizens and potential foreign investors that property rights will be respected. This is an essential element in creating a free enterprise economy. Moreover, the extent to which countries in transition deal successfully with this issue is a good measure of progress in their democratization efforts in general.

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Property restitution and compensation is an extremely complex subject, and there are few if any international agreements to guide governments through what is, in many ways, a political minefield. There is no international requirement that obligates countries in this region to make property restitution or to provide compensation for confiscated properties at all. However, I strongly believe that if these countries do create a legal process for property restitution or compensation, it must meet basic standards of fairness and justice. I don't think that is too much to ask, particularly concerning the treatment accorded to expatriates who are now American citizens. I will watch carefully how these governments actually implement these processes.

I also believe that every government of the OSCE community must honestly work to resolve the outstanding legacies of World War II. While I have been active in pressing Switzerland to account for Holocaust victims' assets that may have been appropriated by Swiss banks, there is also an important role for central and eastern European governments in helping Holocaust survivors. These governments should provide the compensation or restitution that would have been -- and should have been -- available to the victims' heirs, but for the Communist take-overs that imposed tyrannies on their countries for some fifty years.

Secretary Eizenstat, Chair Ridgway, thank you for being here today. I look forward to hearing your testimony.

Thank you, Mr. Chairman.

STATEMENT OF REPRESENTATIVE STENY H. HOYER
Commission on Security and Cooperation in Europe

HEARING ON PROPERTY CLAIMS IN CENTRAL AND EASTERN EUROPE
July 18, 1996

Mr. Chairman, I'd like to begin by thanking you for convening a hearing on what, I know, is an extraordinarily difficult subject. It is one thing to say that there should be restitution of, or compensation for, property that was wrongly expropriated in the past, and another thing entirely to figure out how to go about that process. I am sure that there are many people in our own government who would like to shy away from this subject because of the complexities it entails, and I commend you for taking this up.

For the most part, the issues before us today have their roots in two dark chapters of world history. First, we hope to hear what is being done for those Holocaust survivors who, by an unfortunate stroke of fate, found themselves on the wrong side when the Iron Curtain descended and were therefore denied the compensation that was available to survivors elsewhere. Second, we hope to have a more general discussion of the efforts being undertaken to provide restitution and compensation to the victims of Communist-era expropriations.

Many people who now hold American citizenship came here because they faced political persecution in their homelands; they left those countries only to see their homes, some of which had been in their families for generations, taken over by cronies of the former Communist regimes, members of the secret police and party apparatchiks. Having obtained refuge in the democracies of the West, many of those individuals are now faced with the prospect of having to relinquish their American citizenship in order to try to regain the property they were forced to abandon.

I realize, of course, that Central and East European governments face enormous challenges in trying to address these problems. On the one hand, they want to draw a clear distinction between themselves and the former Communist regimes. On the other hand, they have limited resources and no real experience to guide them in this area. These are very, very difficult issues, Mr. Chairman.

I would also like to thank our distinguished guests for being here today. Under Secretary Eizenstat, I join my voice to those who praise your leadership in bringing greater attention to the plight of Holocaust survivors who have been victimized twice over -- first by the Nazis, and then by Communist regimes that, in effect, prevented them from receiving compensation that was available to survivors in the West and in Israel. I look forward to hearing from you regarding the latest developments in this area. I also welcome your effort to address the concerns of American citizens who were victimized by wrongful property confiscations after World War II -- confiscations that, as I have said, were often a part of the punishment inflicted on people for their political beliefs or activity.

Ms. Ridgway, I also want to welcome you here today. The Foreign Claims Settlement Commission plays an extremely important role in pursuing the claims of American citizens, but it is a role that does not seem to be widely publicized. I hope this hearing will make the scope of your activities both better known and better understood, and I look forward to your insight on how we, as Members of Congress, may better promote the interests of our citizens.

STATEMENT OF DELISSA A. RIDGWAY, CHAIR, FOREIGN CLAIMS SETTLEMENT
COMMISSION OF THE UNITED STATES, U.S. DEPARTMENT OF JUSTICE

Before the

COMMISSION ON SECURITY AND COOPERATION IN EUROPE

July 18, 1996

I appreciate the invitation and opportunity to appear before you today on behalf of the Foreign Claims Settlement Commission, to discuss the role of the Commission in the resolution of property restitution claims and its programs relating to Central and Eastern Europe.

History and Structure of the FCSC

The Foreign Claims Settlement Commission of the United States ("FCSC" or "Commission") is an independent quasi-judicial federal agency, whose primary mission is to determine the validity and valuation of property claims of United States nationals (individuals as well as legal entities such as corporations) against foreign governments. By statute, the decisions of the FCSC are conclusive on all questions of fact and law and are not subject to review by any other official, department or agency of the United States, or by any court by mandamus or otherwise.

The claims adjudicated by the FCSC generally are for losses that resulted either from nationalization of property by foreign governments, or from damage to and loss of property as a result of military operations during World War II. The FCSC has also adjudicated claims of United States military personnel and civilians captured or interned during World War II and the Korean and Vietnam conflicts.

The Foreign Claims Settlement Commission was established in

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1954, as the successor to the War Claims Commission and the International Claims Commission. In 1980, the FCSC was transferred to the Department of Justice as a separate, independent agency within the Department.

The Commission consists of a Chair, who serves on a full-time basis, and two Commissioners, who serve on a part-time basis. All are appointed by the President for fixed terms of office, normally of three years' duration, and confirmed by the Senate.

I was nominated and confirmed to fill the position of FCSC Chair in 1994. Also in that year, John R. Lacey and Richard T. White were nominated and confirmed as Commissioners. Commissioner Lacey was recently reconfirmed for a second term.

The Chair and Commissioners are responsible for the review of claims and the issuance of decisions. The Chair is vested with sole administrative authority within the FCSC, while the Department of Justice is responsible for providing administrative support services to the agency. The FCSC employs a small staff of legal and administrative personnel.

The 48-year history of the FCSC and its two predecessor commissions has encompassed the successful completion of 41 claims programs, involving the adjudication of more than 660,000 claims and the issuance of awards in excess of \$3 billion.

Current FCSC Programs

The Commission is presently adjudicating the claims of U.S. nationals against Albania, for expropriations of real and personal

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property by the former Communist regime which took power in that country at the end of World War II.

In addition, just last month the Commission announced the commencement of a Holocaust Claims Program, to adjudicate the claims of persons who were U.S. citizens and were interned in Nazi concentration camps or under comparable conditions. That program is being conducted pursuant to a September 1995 agreement between the U.S. and Germany, related to the celebrated case of Holocaust survivor Hugo Princz.

The Commission is also presently registering certain claims against Iraq, in anticipation of legislation which would authorize FCSC adjudication of the billions of dollars in outstanding claims against that country.

Most recently, in February 1995, the FCSC completed the adjudication of more than 3100 claims against Iran which arose out of the 1979 Islamic Revolution. The FCSC's Iran Claims Program was conducted between 1991 and February 1995, implementing a June 1990 settlement agreement between Iran and the United States.

The history of the FCSC and its predecessor agencies also includes claims programs against countries such as Cuba, China, Vietnam, Ethiopia, Egypt, Panama and Italy. But many of the Commission's claims programs have involved claims for takings by Communist regimes in Central and Eastern Europe.

The Legal Framework for International Claims

One of the key concepts in the legal framework of international claims is the concept of "espousal." Under

international law and practice, a claim of a national of one country against a foreign state may be converted into a claim of one country against the other, which the two sovereigns may settle. Accordingly, the Government of the United States has the discretion, if certain conditions are met, to take up -- or "espouse" -- the claim of one of its nationals against a foreign government for conduct that violates international law. This discretion is vested in the President and exercised on his behalf by the Secretary of State -- for example, by the negotiation of a government-to-government agreement settling a group of claims en bloc for a lump sum payment from the other government to the United States.

One important caveat, however, is the universally accepted principle of international law that a state does not have the right to ask another state to pay compensation to it for losses or damages sustained by persons who were not its citizens at the time of the loss or damage. In other words, it is not enough for a claimant to be a U.S. national at the time of espousal; to have his claim espoused by the United States, the injured person also must have been a U.S. national at the time the taking occurred.

The United States therefore cannot espouse the claim of one who was an Albanian citizen (and who was not also a U.S. citizen) at the time his property was expropriated by the Hoxha regime -- even if that person is now a United States citizen. As a general rule, the remedies available to such a person are those under the domestic law of Albania. This fundamental tenet of international

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law applies with equal force to other countries, but is often difficult for aggrieved members of the public to accept.

The FCSC works closely with the Department of State in the handling of claims that are espoused or may be espoused. Jurisdiction to adjudicate such claims may be conferred on the FCSC either by Congress via legislation or by government-to-government settlement agreement negotiated by the State Department.

Funds for payment of awards issued by the FCSC may come from any of three sources. The classic case is a lump sum payment by a foreign government pursuant to a government-to-government settlement agreement. The settlement agreement concluded last year between the United States and Albania is an example of this approach. In other cases, assets of the foreign country which are frozen in the United States may be available. This is the approach that was used in the legislation that authorized the Commission's first Czech claims program. Alternatively, it is also possible to appropriate taxpayer funds for the payment of awards. However, this approach has been used only twice, in the case of Korea and Vietnam POW claims.

Claims may be adjudicated either before or after funds for payment of awards are available. The better practice is to adjudicate claims as soon as possible after they arise -- even if funds are not then available to pay the awards. This process, called "pre-settlement adjudication," allows the FCSC to establish a contemporaneous record while the evidence is still fresh. The Commission's Cuban Claims Program, conducted from 1965-72, is an

example of pre-settlement adjudication. The awards rendered by the FCSC in that program will eventually serve as the basis for a negotiated settlement with a future, friendly democratic government in Cuba.

The Commission's ongoing Albanian Claims Program is an example of the other case -- where claims are not adjudicated until after a government-to-government settlement agreement is reached. As discussed below, this approach presents great challenges for the Commission and for claimants when decades pass between the losses and the adjudication of the claims.

Procedure and Administration of Claims Programs

The non-reviewability of FCSC decisions makes it imperative that the Commission establish appropriate administrative and legal procedures to assure all claimants a full and fair opportunity to present their claims.

When a claims program is commenced, appropriate claim forms and detailed instructions are forwarded to anyone who requests them or has at any time indicated to the FCSC or the Department of State an interest in filing a claim against the country at issue. The FCSC also conducts an outreach campaign, publicizing the new claims program through the *Federal Register* and releases to the news media, and notifying relevant organizations and Congressional offices.

As completed claim forms are filed, they are reviewed carefully by the FCSC staff. If necessary, the staff seeks additional information or evidence from the claimant or other

sources to assist the claimant in proving the requisite elements of a claim -- United States nationality, ownership, value and the date and circumstances of the asserted loss. The adjudication of a claim is not considered to be an adversarial matter between the FCSC and the claimant; the FCSC staff seeks to do all that is reasonably possible to assist each claimant in establishing a compensable claim.

After a claim has been fully developed, it is presented to the three members of the Commission for decision. Following a full review of the claim and all supporting material, the FCSC issues a written "Proposed Decision."

This Proposed Decision is forwarded to the claimant or claimant's counsel who is advised of the right to file an objection within a specified period of time, if the claimant believes there is ground for a more favorable decision. The claimant may submit additional evidence and argument, in writing, in support of the objection. In addition, the claimant may request an oral hearing before the FCSC to present oral evidence and argument. Thereafter, the FCSC reconsiders the entire record and renders its determination by the issuance of a written "Final Decision."

If no timely objection is received on a claim, the Proposed Decision is automatically entered as the FCSC's Final Decision. However, even after the issuance of a Final Decision, the regulations of the FCSC permit the filing of a petition to reopen a claim for further consideration based upon newly discovered evidence. Or, if relevant information comes to the attention of

the FCSC from sources other than the claimant, the FCSC may reopen a claim on its own motion to amend the decision.

In most instances, a time limit within which the FCSC must complete adjudication of the claims is established by statute. After the specified date, the FCSC no longer has authority to accept new claims or to reconsider any claim which has been determined in that program. Even when there is no statutory deadline, the Commission is nevertheless similarly constrained after it has officially closed a program and certified its awards to the Treasury Department for payment from the appropriate fund.

In most programs, the funds available to pay the FCSC's awards are limited, and are insufficient to pay all awards with interest in full. As a result, awards generally are paid on a pro rata basis, as provided in the International Claims Settlement Act. The FCSC therefore must ensure that the award entered in each claim is fully supported, and based upon the same criteria as all other awards. Each decision by the FCSC sets forth the reasons for the action taken and includes specific findings of fact and conclusions of law on each aspect of the claim, to fully apprise claimants of the basis for its decisions.

Payment of awards to claimants is beyond the scope of the FCSC's functions. The FCSC's responsibility is discharged upon the entry of a Final Decision and the certification of any award to the Secretary of the Treasury. The Secretary of the Treasury has sole jurisdiction, under specific statutory authority, to make payments out of the funds established for that purpose.

In most instances, the statute authorizing Commission adjudication of a block of claims provides for the deduction of a certain percentage from the claims fund for deposit as Miscellaneous Receipts in the United States Treasury. These monies are used to defray the administrative expenses incurred by the FCSC and the Department of the Treasury in carrying out the claims programs. The administrative expenses of the FCSC and its predecessors from the beginning of fiscal year 1950 through the end of fiscal year 1994 have totaled approximately \$30 million. Over \$ 32 million has been recouped from deductions from funds obtained from foreign governments in the same period -- a net surplus.

FCSC Claims Programs For Central and Eastern European Countries

The developments of recent years towards democracy and free market economies in the former Soviet bloc have prompted renewed interest in the FCSC's programs adjudicating claims for takings by former Communist regimes in Central and Eastern Europe. Those programs -- against Yugoslavia, the Soviet Union, Hungary, Romania, Bulgaria, Czechoslovakia, Poland and East Germany -- are summarized below. The Commission's ongoing Albanian Claims Program is discussed in greater detail. Through these programs the FCSC has already adjudicated virtually all espousable claims arising in Central and Eastern European countries in the years covered by these agreements. And indeed, all awards except those in the claims against the former Soviet Union have been paid.

Yugoslavia. The first post-World War II settlement of U.S. nationals' expropriation claims was with Yugoslavia in 1948.

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Pursuant to the settlement agreement between the two nations, Yugoslavia made a lump-sum payment of \$17 million to the United States to discharge its claims liability. To implement the settlement agreement, legislation was enacted in 1950 establishing the International Claims Commission within the Department of State to determine the validity and amount of individual claims covered by the agreement. The FCSC succeeded the International Claims Commission in 1954.

Soviet Union, Hungary, Romania and Bulgaria. In 1955, Congress authorized the FCSC to adjudicate pre-1933 claims against the Soviet Union, as well-as claims against Hungary, Romania and Bulgaria. Awards against the USSR were satisfied in part with proceeds from the 1933 Litvinov Assignment. Enemy assets vested during World War II were used to make partial payments on awards against Hungary, Romania and Bulgaria. Those three countries later entered into lump-sum settlement agreements with the United States providing further funds for payment of claimants' awards. However, nothing further has been paid on the awards against the USSR.

In 1988, the United States and the Soviet Union began negotiations to reach a final settlement of the claims adjudicated by the FCSC in the 1950s, as contemplated by the Litvinov Assignment. Several rounds of talks were held in Washington and London between 1988 and 1991, but there has been no further action since the collapse of the Soviet Union. No further negotiations are scheduled at this time.

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Czechoslovakia. The Commission began its Czechoslovakian Claims Program in 1958. The awards made in that program were paid in part with proceeds from sale of steel mill components purchased in the United States by the Czech Communist regime. The components had been seized at the President's order pending settlement of claims and other issues. But \$104 million in awards remained unpaid.

In the early 1970s, the Department of State sought to reach a final settlement with Czechoslovakia for \$20 million. However, Congress passed legislation barring implementation of the agreement pending its approval. The legislation also barred release of 18.4 tons of Czech gold then being held by the Tripartite Commission on the Return of Monetary Gold (made up of the United States, France and Great Britain) -- gold recovered from Nazi occupation forces which had seized it in Czechoslovakia during World War II.

In 1981, a settlement finally was reached and approved. Under that agreement, Czechoslovakia made a lump sum payment of \$81.5 million to the United States, in return for the release of the gold.

Poland. In 1960, while the Czech Claims Program was still under way, the United States reached a claims settlement with Poland. The Commission's Polish Claims Program was conducted from 1960-66. The awards made in that program were paid from annual installment payments of \$2 million made by Poland to the United States between 1960 and 1980, for a total payment of \$40 million.

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Germany. Following the unification of Germany in 1990, the United States concluded a settlement of claims against the former East German Communist regime. That agreement, signed in May 1992, covered claims "pre-adjudicated" by the FCSC under legislation enacted in 1976. The agreement is unique because it allowed claimants to elect their remedy. A claimant was allowed to opt to share in the lump-sum settlement or to waive payment in order to seek return of family properties under German restitution law.

Albania. Albania is the most recent formerly Communist country to settle claims with the United States. The two countries agreed to a settlement of \$2 million in April 1995. The FCSC is now adjudicating the claims covered by that agreement. To date, the Commission has received approximately 300 claims, many dating back to 1944.

The Albanian Claims Program starkly illustrates the difficulty of adjudicating claims for takings by a Communist regime. The inherent problems have been greatly compounded by the age of the claims. The challenges confronting the Commission include:

- Documentary proof of property ownership is non-existent in many cases. Property recordation systems were not well-developed in Albania in the 1940s; ownership of property was not necessarily recorded. What records did exist were destroyed throughout much of the country when the Hoxha regime came into power and private ownership of property was abolished.

- In many cases, there are competing claims to the same property, due to the increase in the size of villages and the multiplicity of heirs.
- Laws on matters such as inheritance and restitution, compensation and privatization are unclear or contradictory.
- Establishing the value of property at the time of taking is problematic. Ordinarily, land values are established by reference to the purchase and sale of comparable property. But there was little market in property in Albania before the Communists. Property was generally passed from one generation to the next in a family; sales to third parties were relatively rare. And, after the Communists came into power, private ownership of property was abolished and there was no market whatsoever.
- There are unconfirmed reports of corrupt officials, allegedly willing to forge land records or decide claims in favor of those offering bribes. The FCSC has been cautioned to be suspicious of all documentation from Albania.
- Communication is poor between the central government in Tirana and district officials throughout the country. The result is a widespread lack of information about the domestic Albanian restitution and compensation program, and an inability to obtain information from district-level officials about the ownership of parcels of property in their locales.

The FCSC expects to complete its Albanian Claims Program in early 1997. Claims found compensable will then be certified to the

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Treasury Department for payment from the \$2 million settlement fund. To date, however, the Albanian government has not made the necessary arrangements for the release of its gold (presently held by the Tripartite Gold Commission), and the simultaneous payment of the \$2 million settlement amount.

FCSC Claims Surveys

The April 1995 agreement between the United States and Albania was predicated at least in part on a survey of potential claims against Albania conducted by the FCSC in 1992. Also in 1992, at the request of the Department of State, the FCSC surveyed potential claims of U.S. nationals against the governments of the Baltic countries -- Estonia, Latvia, and Lithuania -- in preparation for normalization of diplomatic relations with those countries. A small number of claims were assessed as probably valid, and the FCSC provided a report to that effect to the Department of State.

The Department of State ultimately decided to leave resolution of those claims to the domestic programs in the respective Baltic countries. The only involvement of the U.S. Government was to block briefly a small portion of Estonian and Latvian assets in the U.S., as a "bargaining chip" to help ensure that U.S. claimants' rights to pursue their claims in those countries were respected. However, that blockage was terminated in August 1994.

No similar surveys of potential claims have been conducted with respect to other former constituent republics of the Soviet Union. It is probable, however, that U.S. nationals have outstanding claims against at least some of those states.

Assistance To Claimants In Other Countries' Claims Programs

Although the work of the FCSC focuses on "espousable" claims, it has from time to time worked with the Department of State to assist those who were not U.S. nationals at the time of their losses in seeking restitution or compensation through domestic claims programs administered by the post-Communist governments in Central and Eastern Europe.

The FCSC, together with the Department of State, conducted a public information campaign to educate potential claimants about restitution laws enacted in Germany, Czechoslovakia, and Albania in 1990, 1991, 1992, and 1993. Detailed information about domestic claims programs in those countries was compiled, photocopied, and mailed to hundreds of individuals.

The FCSC also provided official confirmation to individuals pursuing claims under Czech and Hungarian restitution/compensation laws who did not receive compensation in the FCSC's Czech and Hungarian Claims Programs. Those official statements enabled the individuals to demonstrate their eligibility to participate in the claims programs being administered by the Czech and Hungarian governments.

Another major development in this area is a new provision included for the first time in the U.S.-German and U.S.-Albania settlement agreements. That provision obligates those governments to afford U.S. nationals the same rights afforded nationals of those governments to pursue and receive compensation, restitution or any other local remedy available under their domestic

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restitution or compensation procedures. Thus, at the same time it achieved a settlement of the "espousable" claims of U.S. citizens, the Department of State also used its leverage to seek to ensure even handed treatment of those U.S. citizens whose claims were not espousable.

It is difficult to know whether this new provision is making a real difference in ensuring that U.S. citizens receive even-handed treatment in pursuing their claims in Albania and Germany. The FCSC has received some anecdotal reports of problems from U.S. claimants participating in Albania's domestic program. However, the United States Embassy in Tirana has advised the FCSC that it has seen no evidence that U.S. citizens filing claims in the Albanian domestic program have been treated unfairly.

Conclusion

The Foreign Claims Settlement Commission has a distinguished history of promoting the international rule of law by providing a forum for the adjudication of claims of United States nationals against foreign governments. Through the work of the Commission and its predecessors, virtually all espousable claims arising from Communist takings after World War II have been adjudicated pursuant to settlement agreements, and significant compensation has been paid. The Commission would be pleased to provide its expertise to the Commission on Security and Cooperation in Europe and Undersecretary Eizenstat as they address property claims in post-Communist Central and Eastern Europe, and would welcome the continued support of both in the fulfillment of the FCSC's mission.

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That concludes my statement, Mr. Chairman. I will be pleased to answer any questions that you or your colleagues may have.



U. S. Department of Justice

Foreign Claims Settlement Commission of the United States

Office of the Chair

Washington, D.C. 20579

18 July 1996

Background Information

FOREIGN CLAIMS SETTLEMENT COMMISSION

Mission

- * Foreign Claims Settlement Commission (FCSC) is quasi-judicial, independent agency within U.S. Department of Justice
- * Primary mission is the adjudication of claims of U.S. nationals against foreign governments which have nationalized, expropriated or otherwise taken property of those nationals without adequate compensation as required under international law
- * Commission decisions are final and not reviewable under any standard by any court or other authority

Composition

- * Agency consists of a tribunal of a full-time Chair and two part-time Commissioners (all appointed by the President), as well as a legal staff and an administrative staff
- * Current Chair is Delissa A. Ridgway, who both presides over the tribunal and serves as administrative head of the agency; Two commissioners are John R. Lacey and Richard T. White
- * Chief Counsel is Mr. David E. Bradley; Deputy Chief Counsel is Mrs. Jaleh Barrett

History

- * FCSC established in 1954, when it assumed functions of two predecessor agencies -- War Claims Commission and International Claims Commission
- * FCSC and its predecessor agencies have successfully completed 41 claims programs against various countries including Iran, Yugoslavia, Bulgaria, Rumania, Hungary, the Soviet Union, Czechoslovakia, Poland, Italy, Cuba, China, East Germany, Vietnam, Ethiopia, Egypt and Panama
- * Historically, more than 660,000 claims adjudicated, with awards totaling in the billions of dollars

Iran Claims Program

- * Most recently, Commission completed adjudication of 3100+ claims against Iran, which arose out of 1979 Islamic Revolution
- * FCSC's Iran Claims Program conducted between 1991 and February 1995, pursuant to June 1990 Iran-U.S. Settlement Agreement
- * Total awards in excess of \$86 million

Vietnam Claims Program

- * On January 28, 1995, U.S. and Vietnam signed "Agreement Between the Government of the United States of America and the Government of the Socialist Republic of Vietnam Concerning the Settlement of Certain Property Claims," providing for lump sum settlement in payment of claims against Vietnam previously adjudicated in FCSC's Vietnam Claims Program
- * From 1980-86, FCSC conducted "pre-settlement adjudication" of claims of U.S. nationals whose property was seized by Vietnam in 1975
- * FCSC issued awards to 192 claimants totaling \$99.5 million, at 6% interest
- * Pursuant to January 1995 U.S.-Vietnam Settlement Agreement, \$203.5 million allocated for payment of FCSC awards to claimants; Funds disbursed to awardees by U.S. Treasury Department

Current DevelopmentsAlbanian Claims Program

- * U.S.-Albanian Claims Settlement Agreement signed on March 10, 1995, ratified by Albanian Parliament, and entered into force on April 18, 1995
- * In furtherance of Settlement Agreement, FCSC recently commenced Albanian Claims Program, to adjudicate claims of U.S. nationals for losses suffered at hands of Communist regime which seized power in that country at end of World War II
- * Expect to adjudicate estimated 300 claims, to be paid out of fund of \$ 2 million lump sum payment from Albania

Iraq Claims Registration Program

- * Five years after end of Gulf War, still no viable forum for U.S. nationals whose claims against Iraq are outside jurisdiction of United Nations Compensation Commission ("UNCC") in Geneva
- * These thousands of non-UNCC claims -- with estimated value in excess of \$ 5 billion -- include, for example, commercial claims which pre-dated Iraq's August 1990 invasion of Kuwait, and claims of U.S. military personnel and their survivors related to Desert Shield and Desert Storm (as well as claims for injuries in Iraq's 1987 attack on USS Stark)
- * Iraq Claims Act, forwarded to Congress by the Administration, would authorize FCSC adjudication of outstanding claims against Iraq
- * In meantime, FCSC has established Iraq Claims Registration Program, to develop comprehensive registry of outstanding claims against Iraq; Registration Forms and related materials now available from FCSC; Deadline for filing claims is 30 August 1996

Cuba Claims Program

- * From 1965-72, FCSC conducted "pre-settlement adjudication" of property expropriation claims against Castro regime by then-U.S. nationals
- * FCSC adjudicated total of 8,816 claims; Of those, 5,911 certified as valid, with total value of over \$1.8 billion (exclusive of interest); With interest, fixed at 6% per year, total is approximately \$ 5.6 billion
- * Under new LIBERTAD Act -- signed by President on 12 March 1996 -- FCSC awards in Cuba Claims Program may serve as predicate for federal court actions by aggrieved U.S. nationals whose Cuban properties were expropriated, against foreign entities "trafficking" in those properties (although President has imposed six-month moratorium on filing of lawsuits)
- * Beginning in 1998, lawsuits can be filed by plaintiffs who were not eligible to file claims in FCSC Cuba Claims Program (because they were not then U.S. nationals); in such cases, LIBERTAD Act authorizes federal courts to appoint FCSC as Special Master to decide issues such as ownership and valuation of property, for use in federal court actions

Holocaust Claims Program

- * U.S. and Germany signed agreement on 19 September 1995, providing reparations for certain U.S.-citizen survivors of the Holocaust, with compensation to be paid in two stages
- * Three million German marks (\$ 2.1 million) were paid at time of agreement to Hugo Princz and small group of other known concentration camp survivors
- * Additional lump sum payment to be determined via negotiations after September 1997 to compensate additional, similarly-situated claimants on same terms
- * Legislation passed in early 1996 authorizes FCSC to receive and adjudicate cases of additional claimants; FCSC determinations then will serve as basis for second round of negotiations with Germany, to be conducted by Department of State
- * Second round of negotiations will settle all claims against Germany, whether or not they have been raised; FCSC therefore must strive to locate all eligible claimants and decide their claims before September 1997
- * Holocaust Claim Forms now available from FCSC; Filing deadline is 30 September 1996

For additional information, contact: Foreign Claims Settlement Commission
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FOREIGN CLAIMS SETTLEMENT COMMISSION

TABLE OF COMPLETED PROGRAMS

A. International Claims Settlement Act of 1949							
Title/Country	Program Dates		No. of Denials	No. of Awards	Principal Amt. of Awards	Amt. of Settlement Fund	Approx. % of Awards Paid
	Filing Deadline	Completion					
Title I							
Yugoslavia-First	6/30/51	12/31/54	671	876	\$18,417,112.90	\$17,000,000.00	91%
Yugoslavia-Second	1/15/58	7/15/69	1,354	519	9,685,093.22	3,500,000.00	36.1%
Panama	8/4/52	12/31/54	5	62	441,891.84	400,000.00	90%
Poland	3/31/62	3/31/66	5,147	5,022	100,737,681.63	40,000,000.00	33%
China-Second	8/31/79	7/31/81	78	3	176,454.83	80,500,000.00 ¹	\$1,000 plus 47.50%
Ethiopia	9/30/86	9/30/87	18	27	14,387,510.96	7,000,000.00	\$1,000 plus 48.55%
Egypt	11/30/89	6/29/90	2	83	5,885,369.12 ²	10,000,000.00	100% plus interest
Title III							
Bulgaria-First	9/30/56	8/9/59	174	217	4,684,186.46	2,676,234.49	\$1,000 plus 69.71%
Bulgaria-Second	6/30/70	12/24/71	49	13	141,400.00	400,000.00	do
Hungary-First	9/30/56	8/9/59	1,572	1,153	58,277,457.94	2,235,750.65	\$1,000 ³ plus 37%
Hungary-Second	5/15/75	5/16/77	1,159	365	3,729,227.64	18,900,000.00	do
Romania-First	9/30/56	8/9/59	575	498	60,011,347.78	20,164,212.68	\$1,000 plus 37.84%
Romania-Second	6/30/70	12/24/71	300	85	1,091,102.00	2,500,000.00	do
Italy-First	9/30/56	8/9/59	1,764	482	2,239,413.34	5,000,000.00	100% plus interest
Italy-Second	6/30/70	12/24/71	324	90	Int. 762,294.45 348,934.33 Int.	1,086,520.23	do
Soviet Union	4/2/56	8/9/59	2,205	1,925	70,466,019.00	8,658,722.43	\$1,000 plus 9.72%

Title IV

Czechoslovakia	9/15/59	9/15/62	1,346	2,630	\$113,645,205.41 ⁴	\$ 8,540,768.41	\$1,000 plus 5.30¢ 70.93¢
Czechoslovakia-Second ⁵ Benes Claims	None	2/24/85					
Post-1958 Claims	2/24/83	2/24/85	1,292	128 327	43,906,382.07 5,120,927.83	5,400,000.00 1,500,000.00	12.30¢ 29.29¢
Title V							
Quba	5/1/67	7/6/72	2,905	5,911	1,851,057,358.00	(None)	
China-First	7/6/69	7/6/72	198	378	196,681,841.00	80,500,000.00	\$1,000 plus 47.50¢
Title VI							
German Democratic Republic	5/16/78	5/16/81	1,999	1,899	77,880,352.69	190,000,000.00 ⁶	100¢ of principal plus interest
Title VII							
Vietnam	2/25/83	2/25/86	342	192	99,471,983.51	(None)	

¹Also covers awards issued in the First China Claims Program under Title V of the Act.

²Includes awards in the principal amount of \$5,767,610.34 issued by the Department of State before transfer of the claims to the Commission in 1989.

³\$1,000 plus 40¢ paid on war damage claims in which awards were granted in this program (38.5¢ from War Claims Fund).

⁴Includes both principal and interest inasmuch as payment priorities and limitations under this Title were based on the total amount of awards whereas such priorities and limitations under Titles I and III were based on prorated payments on principal amount of awards, prior to making payments on awards of interest. Breakdown of Czechoslovakia awards amount is: principal—\$72,614,634; interest—\$41,030,571.

⁵Under an agreement signed on January 29, 1982, the Czechoslovakian Government paid \$81.5 million for settlement of all claims of U.S. nationals arising between January 1, 1945 and February 2, 1982. Under the Czechoslovakian Claims Settlement Act of 1981 (P.L. 97-127) Congress established a \$74.55 million fund for further payment of awards under Title IV and authorized the Commission to redetermine certain claims for losses of property owned by persons who became U.S. nationals as of February 26, 1948, and to adjudicate claims for losses arising after August 8, 1958, the end of the period covered by the First Czechoslovakian Claims Program. Funds of \$5.4 million and \$1.5 million, respectively, were set aside by Congress for payment of these awards.

⁶On May 13, 1992, the United States and the Federal Republic of Germany (FRG) signed an agreement for settlement of these claims for \$190 million, with the proviso that the United States would refund to the FRG the portion of that amount which comprised award payments waived by claimants who elected to forgo their awards in favor of pursuing claims for property restitution or compensation under German law. The actual amounts that are respectively to be disbursed to claimants and refunded to Germany will not be known until 1996.

B. War Claims Act of 1948

Authority	Type of Claim	Filing Period	No. of Claims	No. of Denials	No. of Awards	Amount of Awards	Program Completed
Title I							
6(b)	Members of U.S. Armed Forces held as prisoners of war during World War II-\$1 per day for inadequate food rations.	1/30/50-3/31/52	286,315	1,06,590	179,725	\$ 49,935,899	3/31/55
5(a)	U.S. civilians interned by Japanese or in hiding in U.S. territories and possessions during World War II-\$60 per month.	do	23,000	13,740	9,260	13,679,329	do
7(a)	U.S. affiliated religious organizations and personnel for reimbursement for aid furnished to U.S. Armed Forces and civilians during World War II in Philippines.	do	10,194	10,159	35	2,858,560	do
6(d)	Members of U.S. Armed Forces held as prisoners of war during World War II-\$1.50 per day for forced labor and inhumane treatment.	4/9/52-8/1/54	254,228	75,328	178,900	73,492,926	do
7(b-c)	U.S. affiliated religious organizations for damage or loss of educational and other non-religious facilities in Philippines during World War II.	do	89	41	48	17,238,597	do
6(e)	Members of U.S. Armed Forces held as prisoners of war during the Korean Conflict-\$2.50 per day.	8/21/54-8/21/55	9,877	427	9,450	8,874,458	8/21/56
5(g)	U.S. civilians interned or in hiding during Korean Conflict-\$60 per month.	do	10	0	10	16,774	do
5(f)	U.S. civilian employees of contractors interned by Japanese in U.S. Territories and possessions during World War II-\$60 per month.	8/31/54-8/31/55	2,968	746	2,222	4,082,086	8/31/56

**U.S. Department of Justice****Foreign Claims Settlement Commission
of the United States***Washington, D.C. 20579*

June 13, 1996

**HOLOCAUST CLAIMS PROGRAM
Fact Sheet**

- The new Holocaust Claims Program, to be conducted by the Foreign Claims Settlement Commission of the United States, will implement a September 1995 Agreement between the Governments of the U.S. and Germany.
- Under the September 1995 Agreement and the Holocaust Claims Program, compensation is available to Holocaust survivors who meet all three of the following criteria:
 - Were U.S. citizens at the time of their Nazi persecution; and
 - Were interned in a concentration camp or under comparable conditions; and
 - Have not previously received any compensation from the German Government.

The September 1995 Agreement specifically excludes compensation for those who were subjected to forced labor only and were not interned in a concentration camp.

- All claims within the scope of the September 1995 Settlement Agreement (as described above) will be extinguished when the Holocaust Claims Program is completed, whether or not they have been asserted. Therefore, all individuals with claims within the scope of that Agreement should file those claims in the Holocaust Claims Program, to protect their rights.
- The deadline to file claims in the Holocaust Claims Program is September 30, 1996. However, claimants are encouraged to file as promptly as possible.
- To obtain Claim Forms and other information about the Holocaust Claims Program, contact:

Foreign Claims Settlement Commission
Washington, D.C. 20579
Phone: 202/616-6975
Fax: 202/616-6993



UNITED STATES DEPARTMENT OF COMMERCE
The Under Secretary for International Trade
Washington, D.C. 20230

Testimony of

Stuart E. Eizenstat
Under Secretary for International Trade

U.S. Department of State
Special Envoy for Property Claims
in Central and Eastern Europe

Before the
Commission on Security and
Cooperation in Europe

July 18, 1996



UNDER SECRETARY EISENSTAT'S
TESTIMONY BEFORE THE
COMMISSION ON SECURITY
AND COOPERATION IN EUROPE

July 18, 1996
10:00 AM

I. INTRODUCTION

Thank you Chairman Smith, Co-Chair D'Amato, and the Members of this Commission for providing me with an opportunity to testify this afternoon in my capacity as the U.S. Government's Special Envoy for Property Claims in Central and Eastern Europe. I am particularly grateful for your continuing interest in matters of restitution and believe that with your support, we will reach a fair resolution of the tragic injustices that have brought us here today.

My task as Special Envoy has been to promote the just and transparent resolution of claims for properties confiscated or stolen by the Nazis and their sympathizers or by the Communist governments in Central and Eastern Europe. In just over a year, I have traveled to eleven countries in the region: Belarus, Bulgaria, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania, the Slovak Republic, and Ukraine. As these countries are new democracies, we felt it important to bring this issue to their attention. I commenced my visits to the region by traveling to Hungary and Poland -- two countries where we felt significant restitution issues existed but also where there was significant potential for progress. As the recent agreement between the World Jewish Restitution Organization (WJRO) and the Government of Hungary which I will discuss later demonstrates, this was a good starting point. We hope this success paves the way for success in other countries.

After this initial trip, I sought to visit other countries in the region as my schedule permitted. I have also traveled to Germany and Switzerland -- Germany, because of its potential pivotal role in compensation issues, and Switzerland to explore the issue of Holocaust era assets in Swiss accounts, another arena which has demonstrated exciting progress in the past two months. I hope to get to Russia sometime later this year. With the coordinated support I have received from the embassies, the Department of State, and the Congress, we have made substantial progress in encouraging property restitution in these new democracies.

II. THE MISSION

On my many trips to the region, I have continually emphasized a number of central points to the senior government officials -- including presidents, prime ministers, and foreign ministers -- that I have met with. First, I have made clear to all concerned the significance that the U.S. Government attaches to this difficult and complex issue, and I have stressed the importance of resolving property claims issues in ways that are just, fair and non-discriminatory. I have emphasized our willingness to serve as a catalyst to assist in closing this difficult chapter in history.

Second, I have emphasized the need for cooperation by all parties. We do not seek to dictate solutions or negotiating partners. Rather, we urge that governments address the question of promoting restitution and compensation of communal and private properties in ways that meet the expectations of local communities and are credible to international organizations which act in partnership with local groups. We also seek to promote solutions that are fair to U.S. citizens with claims for property confiscated during the Nazi and Communist eras.

Third, although we understand their financial constraints as they struggle to reform their economies, the new democracies of Central and Eastern Europe should avail themselves of this historic opportunity to stand against the enduring evils of Nazi and Communist persecution. Through the open, fair and comprehensive return of confiscated and stolen property, these countries can finally begin to address a half century of injustice.

We have also stressed that a critical priority should be assistance for aging, destitute survivors who are victims of a historic anomaly: Holocaust survivors in the West and Israel receive compensation from Germany. Those in the East who have survived both the Holocaust and Communism remain largely uncompensated. These people are desperately and immediately in need of income to provide themselves with security and dignity in their last years -- income that could be generated through the use of restituted communal properties. Immediate and judicious resolution of these issues would ensure that these survivors can live the balance of their lives in dignity.

III. THE RETURN OF PROPERTIES: PRIMARY ISSUES

The subject of my work as Special Envoy has focused on the claims of U.S. citizens and others whose property was confiscated either during World War II by the Nazis and their allies, or afterwards by the Communists. These claims are divisible into

three general categories: 1) claims for public or communal property such as synagogues, cemeteries, and schools; 2) claims for private property by survivors and heirs; and 3) claims for heirless or "abandoned" properties. I have been asked to address all three of these categories in my testimony today.

Our initial focus has been on communal property -- the most promising of the three categories in the near term. The hope is that success with communal property can be used to build momentum in the other categories, even though private property claims are quite different and often more difficult. In many cases, the countries I visited have begun returning at least certain types of communal property. A number of countries are also setting up restitution foundations in cooperation with local and international Jewish organizations to organize the restitution process and manage the communal properties that have been returned.

The return of communal property presents a number of difficulties. Some countries are returning state-held communal properties pursuant to national legislative action or executive decrees. In some cases, however, property is under the control of independent municipal authorities. In both cases, restitution of properties has often been slow, although the process seems to move more quickly in the case of executive decrees. Furthermore, some laws or decrees call only for return of "religious" communal property, imposing a distinction between religious and non-religious property that was often not clear before the War. In some cases, claimants have also been required to compensate current "owners," relocate persons displaced by the return, and/or allow current tenants to remain for lengthy periods of time. Each of these restrictions causes difficulties and delays for the communities trying to regain their lost assets.

Private claims for the return of individual property are in many ways more difficult than those for communal property, and will most probably take longer to address effectively. A number of countries in Central and Eastern Europe have begun to develop frameworks for the return of private property. Citizenship and/or residency requirements for claimants are the major stumbling blocks in most of the countries I visited. These restrictions often prohibit U.S. and Israeli citizens who suffered grievously in the Holocaust or lost their property under the Communists from regaining their family possessions and homesteads. Even when these restrictions are not prohibitive, the claims process for individuals is often extremely complex and time-consuming, due either to extensive bureaucratic requirements or inexperienced and overburdened judiciaries.

All of the categories of claims mentioned present complex legal questions that should be addressed. The ability of the

United States Government to espouse the claims of its citizens must be determined on a case-by-case basis in accordance with generally recognized principles of international law. In order for the U.S. Government to formally present the claim of a U.S. citizen, the claimant must have been a U.S. citizen at the time the claim arose. The act giving rise to the claim must have been a violation of a nation's responsibilities under international law. Finally, claimants must first exhaust judicial and/or administrative remedies available in the country in resolving the dispute, or demonstrate that to do so would be futile, before the U.S. government could consider espousal.

While much of the impetus for the creation of my original mission came from our recognition of the large numbers of U.S. citizens who were victims of Nazi or Communist aggression, the vast majority of these individuals were not U.S. citizens at the time at which their claims arose. To the extent that there were espousable claims in Central and Eastern Europe, almost all have been settled under the terms of the existing agreements. My mission is a policy initiative designed to urge a fair and non-discriminatory resolution of claims within the context of the domestic laws of each of these countries. Where the existing laws can be made more expansive, we work with these governments to assist in the development of more comprehensive compensation schemes. Of course, we are careful to provide appropriate assistance in any case involving individuals with espousable claims that have not already been settled by claims settlement agreements.

One final difficult issue that has confronted countries in Central and Eastern Europe is how to deal with current occupants of restituted properties. As I have stressed throughout my consultations on other issues, the guiding principle on this very sensitive question should be one of fairness. Any solution which provides restitution to prior owners unjustly dispossessed of their holdings should recognize the need to provide current tenants with the means to relocate without undue hardship.

IV. COUNTRY-SPECIFIC FINDINGS

For the rest of my testimony, I would like to briefly address the specific circumstances of property restitution in each of the countries in which I have traveled, and then discuss the timely matter of dormant or looted Holocaust-era assets in Swiss institutions.

Belarus

I traveled to Belarus for the first time in early March. On that trip, I met with local Jewish leaders, German officials responsible for the Belarus-German Fund for Mutual Understanding, and a number of prominent Byelorussian legislative and executive officials.

No law has been passed in Belarus providing a right of restitution for property losses resulting from the Holocaust as yet. As a result, the return of both communal and private property has been a uniformly difficult process carried out on the municipal rather than national level. Claimants must produce difficult-to-obtain proof from the archives that they owned the given property, and the government has often required that the recipients provide substitute facilities for current occupants. The courts offer an alternate route, but the time and expense involved in court proceedings limits their effectiveness in this area. Despite the difficulties, a number of local Jewish communities have successfully reclaimed their synagogues.

I believe that our role in Belarus should be to encourage the government to enact a comprehensive property restitution law, urge a more effective process for establishing the validity of restitution claims, and suggest that burdensome replacement requirements for those receiving restituted property be eliminated.

Bulgaria

I traveled to Bulgaria at the invitation of the Bulgarian government. Many observers have lauded Bulgaria as having some of the best laws on communal property return in the region. Under their direction, the Bulgarian supreme court recently upheld a finding that the local Jewish community organization, Shalom Met, was entitled to 49% ownership of the Rila, a prominent and profitable hotel in downtown Sofia.

After World War II, Bulgaria resolved many of the problems of seized Jewish property, but it has been slow to settle a number of the confiscation issues from the Communist period. All levels of the Bulgarian government with which I have had contact have expressed their willingness to work to resolve these matters.

Despite the forward-thinking approach of Bulgaria to restitution, particularly with no citizenship or residency requirements for private claimants, I have encountered frustrations by those trying to regain their properties. The major sticking point has been over 200 properties in Sofia, which

have not been returned despite a 1992 government decree requiring it. Sofia's mayor, Stefan Sofianski, has assured me that he would do his part to help resolve these remaining communal property cases and I am hopeful that this issue will be settled.

The Czech Republic

Since 1990, the Czech Republic has taken a number of significant steps to provide for a just settlement of Holocaust and Communist-era claims. These include a 1991 property restitution law, amended in 1994 to cover victims of Nazi persecution, a 1994 law to establish modest one-time payments for Czech Holocaust victims, and a 1994 prime ministerial decree on the return of state-controlled Jewish communal property. The 1994 decree calling for the return of state-owned communal property was a positive development, but many have yet to be returned. We are waiting to see whether the installation of a new government this month will provide the motivation for additional progress on this issue.

Furthermore, many municipalities continue to resist demands to surrender communal properties in their possession. The central government has been helpful in working to encourage their cooperation, but it has thus far refused to support legislation to require them to return the communal properties they control. Two pieces of legislation have been submitted to parliament that would provide for compensation of communal property which had been privatized, and we will be watching their progress carefully.

Restitution of private property in the Czech Republic, as with many other countries in Central and Eastern Europe, is subject to restrictive citizenship requirements. While many private property claims are working through the Czech judicial system, under Czech law only persons who are presently Czech citizens can make restitution claims. I have pointed out in my meetings with Czech officials the discriminatory nature of these requirements and our desire to see them removed, but no action has been taken to eliminate them as yet.

Estonia

Estonia offers a promising case of how our involvement can make a difference in property restitution efforts. This spring we urged the Estonian government to make a grant to the Jewish community to fund part of the purchase of an additional building on a lot next to a Jewish day school, which had already been returned. By the end of April, the government of Estonia had transferred \$40,000 to the community. The money transferred was

part of the funds received by Estonia as part of a block settlement from Germany.

Generally, citizenship and residency requirements are not applicable to individual claims for dwellings in Estonia. Foreigners can receive titles to residences and buildings, but they cannot own land. As Estonia moves closer to membership in the European Union, it will have to eliminate this prohibition. The Estonian government has recently passed a law allowing foreigners and foreign organizations to own land in the country, but the law is subject to approval by the local county governor. This is a promising development, although it is still unclear whether the gubernatorial approval process will present serious obstacles to the effective restitution of property.

Hungary

The Hungarian government has been relatively forward-thinking in its restitution program, and I have been impressed by its determination to resolve both communal and private property issues. It has accepted its obligations under the 1947 Paris peace treaty and a 1993 constitutional court decision to provide "fair" compensation for those who lost their property in the Holocaust and afterwards. I believe the Hungarian government's approach can serve as a positive example for the other Central and Eastern European countries facing the need to address restitution and compensation claims.

I am proud to note, Mr. Chairman, that this month the Hungarian government reached an agreement with the World Jewish Restitution Organization (WJRO) and the Federation of Hungarian Jewish Communities to create a foundation to oversee Hungarian compensation and restitution of communal property for Hungarian Jewish communities. Under the agreement, the foundation will be endowed with \$26.5 million to pay, in the form of privatization coupons, for compensation to Holocaust survivors who reside in Hungary, and will manage restituted properties for the Hungarian Jewish federation. The Hungarian government has assured the WJRO that it will pass implementing legislation for the agreement as the first action of a new parliament when it convenes in late August or early September.

The Hungarian government implemented a property compensation program that ran from 1991 to 1993, in which compensation coupons were distributed to claimants for the purchase of property. There were no citizenship or residency requirements, and those who missed the 1993 cutoff date could still file suit in the Hungarian courts for the return of their property.

Latvia

Current Latvian law only addresses the return of "religious" communal properties. Under it, one synagogue has recently been returned, and discussions are under way on the return of a former religious school. The return of two hospitals operated by the Jewish community presents a more significant bureaucratic challenge due to questions of what constitutes religious property. Ambassador Napper has stressed to the Latvian government that few clear distinctions were made in the pre-War years between religious and non-religious properties and activities. The hospitals could thus be considered religious property if they were employed regularly for religious activities. It is unclear whether the Latvian government agrees.

In the last few months, the Latvian Jewish community, international Jewish organizations and the Latvian government have engaged in an active dialogue on restitution issues. The Latvian government has been supportive of our interest in seeing a satisfactory resolution to the problems of compensation for Holocaust victims, and it intends to create a single Latvian government point of contact to facilitate the process. Jewish organizations are also working to formalize the status of a single foundation to represent the Jewish community on restitution issues.

Although slow, progress in Latvia towards a comprehensive private property restitution program has been made in recent years. The legal basis for such claims is well-grounded in Latvian laws, which have been applied in a generally fair and non-discriminatory manner. Non-citizens and non-residents can receive title to residences and buildings, but as with a number of other countries in the region, they cannot inherit title to land. The Latvian restitution system also requires that current tenants be allowed to remain for up to seven years paying controlled rents, often below maintenance costs, and that the new owners pay existing debts on the buildings. Furthermore, return may be jeopardized if current users made substantial investments in them.

Lithuania

Lithuania, like Latvia, has legislation that provides for the return of religious communal properties. Persons occupying buildings formerly owned by religious communities cannot be displaced, but the community is due compensation if the current occupants choose to remain. Claims under this law have been filed thus far for 30 or more properties, but progress on their resolution is expected to be slow.

In February, I received a letter from Lithuanian Deputy Foreign Minister Januska. In this correspondence, he pledged that the Lithuanian government would solve the issues of returning existing immovable property to Jewish claimants and render them "every kind of assistance." He also reported on the return of between ten and twenty-six communal buildings not strictly "religious" in nature, in keeping with the Lithuanian government's expressed intent to interpret "religious" use as broadly as possible. These structures include hospitals, schools, and homes for the elderly.

Private property restitution claims face substantial hurdles in Lithuania. The Lithuanian constitution still bars Western non-citizens from owning non-commercial property in the country. While a new citizenship law makes it easier in some cases for emigres and their children to regain Lithuanian citizenship, those who seek the reclamation of property may still be required to reside in the country. Lithuania is working to change those provisions and generally liberalize its property ownership laws as it pursues European Union membership.

Poland

I have found the Polish government receptive to our concern for the need to address communal restitution issues. While there is no law as yet regarding communal property, the government has sent a draft restitution bill to the parliament. It is currently being considered in several committees. The bill, which does not address communal properties now in private hands, would allow Jewish communities or associations to purchase, manage, sell and own properties. These rights may be realized through the establishment of a foundation that would include representatives of the international Jewish community. The decision to create such a foundation would be left to the domestic Jewish community. Any funds generated by returned properties must stay in Poland. The most recent estimate is that the bill could be signed into law in November.

Private property restitution continues to present substantial problems for the Polish government due to the magnitude of the properties at issue and other complexities. A draft bill currently being discussed between parliament and the Ministry of Privatization seeks to allow restitution of private property for current Polish citizens who lost it through illegal nationalization by the Polish government between 1944 and 1962. The bill as initially sent to parliament disclaimed any Polish responsibility for property confiscated by the Nazis during the war, and allowed for no restitution from the Polish government for them. This would preclude most Holocaust-related claims, since most Jewish property was confiscated by the Nazis from 1939

- 1944. Holocaust-related claims could be made under the legislation if the property was considered to be so-called "abandoned property," that is, 1) seized by the Nazis, 2) not reclaimed at the end of the war, and 3) subsequently nationalized by the Communist government in a legally flawed manner. Furthermore, the claimant/victim would have to be a Polish citizen, although there would be no residency requirement, and persons holding dual citizenship could make claims. The bill was deemed unconstitutional by parliamentary experts, however, and has been returned to the Ministry of Privatization for redrafting. It is unclear whether these provisions will be eliminated in the new draft bill, or when that draft may be expected to be voted on by parliament.

Romania

Romania currently has no communal property restitution law. The Romanian government recently drafted a restitution bill covering all national minorities, but has not yet forwarded it to the appropriate parliamentary committee for consideration. Due to the Romanian elections to be held in November, legislative progress on this issue may not be possible until next year.

The Romanian government issued a decree in May establishing the means by which representative minority organizations such as those for the Jewish community can review the state archives in search of information on former communal properties. While current progress in this regard has been slow, both the pending legislation and the decree promise to eventually offer significant progress on the restitution of communal property in Romania. On a positive note, the Romanian government, the local Jewish community and the World Jewish Restitution Organization have signed an agreement providing for a foundation to manage restituted properties for the benefit of Romanian and formerly Romanian Jews.

On the private property front, Romania recently passed a law known as the "National Dwellings Act" that allows for partial restitution of private properties taken during and after the War. A restrictive residency requirement in the bill was struck down by the courts and removed from the final law, but a citizenship requirement remains. We have registered our opposition to this requirement with the Romanian government.

The Slovak Republic

The Slovak Republic was the first country in Central Europe to pass a law for the restitution of properties to religious groups. Passed in 1993, it establishes an effective legal

framework for the restitution of religious communal property, and is a model in some respects. However, slow implementation with regard to income-producing properties has hampered the Jewish community's ability to support its elderly survivors.

I am pleased to tell you that what may be a model agreement was recently reached between the World Jewish Restitution Organization and the Central Union of Jewish Religious Communities in the Slovak Republic for the establishment of a joint foundation. As with similar organizations in neighboring countries, the foundation will allocate income for local needs and provide long-term maintenance of Jewish communal properties.

Slovak law restricts restitution claims to those with citizenship or permanent residency, and I am unaware of any Slovakian government efforts to ease the restrictions.

Ukraine

In the Ukraine, a 1992 presidential decree authorizes restitution of "religious" property seized by Soviet authorities. As we have done with other countries restricting communal property returns to "religious" properties, we have urged a liberal interpretation of the term. Because Ukraine has not resolved its approach to private property in the post-Communist era, however, even in the best case this returns only use, not ownership. Furthermore, due to a lack of central authority on this issue, communities and congregations must petition local governments directly, and deal with their disparate regulations and restrictions in piecemeal fashion. Only about 30 communities have received restituted use of their synagogues under this system.

Private property restitution is almost non-existent in Ukraine, once again largely due to the fact that Ukraine has not resolved the issue of private property ownership in general. As in Poland, the magnitude of the restitution problem for properties seized during the War and the Soviet period has slowed the process considerably. Most of the relevant parties believe it would be counter-productive to seek to address the private property claims issues of non-Ukrainians before a national policy on the return of property in general has been developed.

Germany

I include a discussion of Germany in this testimony, not for its own restitution program, which has been extensive, but for what it has done recently with regard to a number of Central and Eastern European states. Since 1990, Germany has entered into

bilateral agreements creating "reconciliation foundations" with Poland, Russia, Ukraine, and Belarus. The Baltic states and Moldova can also access these funds -- Moscow covers claims from Latvia and Lithuania, Minsk handles claims from Estonia, and Kiev deals with claims from Moldova. The foundations have each been financed with between about \$130 and \$350 million and provide relatively modest one-time payments to individuals subject to Nazi persecution by reason of race, faith or ideology.

Germany has also proposed bilateral "block" settlements with each Baltic state worth about \$1.3 million, to be used to fund social projects. We have urged that appropriate projects be identified in consultation with the local Jewish communities.

Unfortunately, an effort to pass a bill in the German parliament providing for significant direct compensation to Holocaust survivors in the Baltics recently failed. The demise of this legislative effort leaves the Baltic Republics with few financial resources with which to compensate individual Holocaust survivors for property or reparations.

V. THE SWISS BANK ACCOUNTS ISSUE

Finally, let me address the issue of Holocaust-era assets possibly residing in Swiss banks and related institutions.

Some dramatic developments have taken place in Swiss restitution/property claims in recent months. Early in the year, the Swiss Bankers' Association (SBA) announced that it had identified a total of approximately \$32 million in dormant World War II-era accounts. To the extent this figure represents interest as well as principal is unclear at the moment. Several Jewish organizations believe this amount should be much greater, in part because the search included only bank accounts with SBA members, and in part because press reports have suggested that significant additional sums may lie in non-SBA institutions such as trusts and insurance houses.

As you are no doubt aware, Mr. Chairman, Senator D'Amato chaired a very productive hearing on the Swiss bank accounts issue in late April before the Senate Committee on Banking, Housing and Urban Affairs, at which I testified, along with Representative Benjamin Gilman, Edgar Bronfman from the World Jewish Congress and Hans Baer from the Swiss Bankers' Association. I believe the hearing was an excellent catalyst for the recent progress that has been made regarding Holocaust-era accounts in Swiss institutions.

On May 2, the SBA, the WJRO, and the World Jewish Congress (WJC) agreed to form an "Independent Committee of Eminent

Persons" to examine the issue of dormant Holocaust-era accounts. The Committee will have "unfettered access to all relevant files" in Swiss banks, and is comprised of seven prominent experts -- three chosen by the SBA, three by the WJRO, and a chairman chosen by the other six members. The Committee's mission will be to thoroughly and transparently review the Swiss bank accounts issue, oversee an additional search or searches for Holocaust-related accounts, and urge the Swiss government to effectively deal with questions of looted assets deposited in Swiss institutions by the Nazis and their allies. Under the agreement, an independent auditor will be hired to review the dormant account matter, and additional experts may be retained as necessary. The Committee was formed and its members named by early June. They met informally in mid-June, and plan to meet again this month.

I believe the independent Committee holds much promise for resolving many of the lingering uncertainties surrounding Holocaust-era assets in Swiss banks. I conveyed U.S. government support for its formation at a meeting with Swiss Ambassador Jagmetti in mid-May, and again in meetings with Swiss government officials in Bern later that month. After some initial resistance, and with urging from the Swiss government, the SBA seems to have realized the sensitive nature of the accounts issue, and is working in good faith to resolve it. Their commitment to the joint committee, and the seriousness of purpose with which they have addressed its formation and support, suggests a sincere effort to settle the issue fairly and openly.

The agreement between the SBA, WJRO and WJC does not resolve all the questions surrounding Holocaust-era assets in Swiss institutions. First, many of the records necessary for identifying the owners or heirs of dormant Holocaust-era accounts may have been lost or destroyed in the normal course of business over the last fifty years. Second, because only banks are members of the SBA, the agreement does not address other organizations, such as insurance companies, trusts, and law firms. Nor can it provide a framework for confronting the complex and troubling issue of possible repositories of valuables and monies looted by the Nazis and hidden in Swiss institutions. Finally, there remains an open question as to how any heirless assets will be handled. All of these difficult issues will require perseverance and commitment, but it is important that they be dealt with effectively.

The independent Committee should also work to expedite the process of restoring assets once their rightful owners have been identified. Many of these rightful owners are aged and in earnest need of financial support, and should therefore be compensated as soon as their claim has been resolved, and before the entire process for claims of others has been completed. I

have expressed this concern to the SBA and others, and some activity seems to be taking place as a result. The legal committee of the Swiss parliament has, through its "unclaimed assets" working group, successfully recommended dividing the claims of individuals from the more general issues raised by unclaimed assets. An ombudsman and the Committee of Eminent Persons will match owners and heirs with dormant bank accounts, while the parliamentary committee and an inter-agency working group are addressing the more general issues of unclaimed and looted assets in Swiss financial institutions. Such a division should allow the more readily resolved questions of individual ownership to be handled and the identified owners to be compensated quickly, without being delayed by the more complex issues of unclaimed assets generally. I understand that the SBA has suggested donating unclaimed assets to relevant charities, including those for the support of Holocaust survivors in Central and Eastern Europe, and I strongly encourage them to pursue such a policy.

The Swiss parliament's legal committee has also recommended passage of federal decrees to provide a framework for the Swiss government itself to undertake a comprehensive study of Holocaust-era accounts in both bank and non-bank institutions. In addition, the Swiss have established a seven-member ad hoc interagency working group under the direction of Ambassador Krafft to study the problem of dormant and looted accounts. We are encouraged by these developments, and will continue to urge the SBA and the Swiss government to ensure a comprehensive accounting of the issue.

VI. CONCLUSION

I would like to close my testimony, Mr. Chairman, by stating that progress is being made -- gradually -- in Central and Eastern Europe. Frameworks for the return of communal property are slowly but surely being erected in most of the countries I have visited. Often these efforts are limited to the return of 'religious' properties, but it is promising that a number of governments with these restrictions have decided to interpret 'religious' use broadly. Joint foundations are being developed in many countries by national governments, local Jewish groups and international organizations to facilitate the communal property restitution process.

Private property restitution efforts present more difficulties, and are generally being considered more slowly. Discriminatory citizenship and residency requirements in many countries, overly bureaucratic claims procedures, inefficient judicial systems, and the problems of how to deal with current occupants all present hurdles that must be overcome before a

comprehensive resolution of private property claims can be achieved. Progress is being made, however, and the U.S. government continues to express at every opportunity its sincere desire to see private claimants, wherever they may be, justly and fairly compensated for their seized or stolen property. Let me add as a final note on the Swiss bank accounts issue, how fortunate I feel to have Ambassador Madeline Kunin, a native of Switzerland and a brilliant and talented individual, to work closely with myself and Swiss authorities as this project progresses.

Thank you Mr. Chairman and Members of the Commission for providing me with the chance to address you today. I look forward to answering any questions you may have.

DEMOCRACY IN DEVELOPMENT:
A RECONNAISSANCE OF
MONUMENTS PROTECTION LAW AND
CULTURAL DIVERSITY
IN POLAND, THE CZECH REPUBLIC,
AND SLOVAKIA



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Phyllis Myers, President
State Resource Strategies, Washington, D.C.
July 1996

Phyllis Myers, President of State Resource Strategies, is a consultant to governments and private groups on conservation policy and author and co-author of publications on historic preservation, heritage, land conservation, and community revitalization. As senior research consultant to the World Monuments Fund project in Central and Eastern Europe for the U.S. Commission for the Preservation of America's Heritage Abroad, she co-authored publications on landmarks surveys in Poland and the Czech Republic and wrote the sections on preservation law. She conducted comparative land use research in Mexico, Israel, and Poland and was the U.S. representative on the steering committee of the International Workshop on Heritage and Conservation in Jerusalem in 1988. She has an M.A. in regional and urban planning from George Washington University and has served on boards of the Committee of 100 on the Federal City, National Coalition for Heritage Areas, American Planning Association, and World Monuments Fund.

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COVER PHOTOGRAPHS

Upper row:

Left: Boskovice, Czech Republic. Entry gate to historic ghetto with origins in 15th century.

Right: Lutheran Evangelical Church, Banska Stiavnica, 18th century. Designed by Viennese architect for affluent parishioners connected to thriving mining industry.

Lower row:

Left: Market Square, Krakow, Poland. Medieval, since expanded and restored. Traders, invaders, sojourners, and others whose history is interwoven in this great square include persons of Scottish, Ethiopian, Venetian, German, Austrian, Italian, Ukrainian, Byelorussian, and Lithuanian descent.

Right: Altschul Upper Synagogue, Mikulov, Czech Republic. Originally built in the 16th century. Reconstructed in 18th century and restored in the 1970s-1980s.

Middle:

Kruszyniani Mosque, Bialystok, Poland, 13th century. One of two remaining wooden mosques in eastern Poland. Photograph by Samuel Gruber, Jewish Heritage Research Center.

Photographs by Phyllis Myers, except as otherwise noted.

**DEMOCRACY IN DEVELOPMENT: A RECONNAISSANCE OF
MONUMENTS PROTECTION LAW AND CULTURAL DIVERSITY IN
POLAND, THE CZECH REPUBLIC, AND SLOVAKIA**

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Phyllis Myers, Washington, D.C. July 1996

Executive Summary

This report looks at post-Communist efforts to transform historic preservation law and practice in Poland, the Czech Republic, and Slovakia to respond to new conditions of democracy, private ownership, economic liberalization, and decentralization. It focuses especially on how these changes are influencing the recognition, documentation, and protection of monuments and special places associated with ethnic and religious minorities.

Despite considerable accomplishments in the Communist era in restoring historic buildings, particularly in Poland and the Czech Republic, losses to the national patrimony during these years were extensive. Historic and cultural sites associated with religious and ethnic minorities were especially vulnerable to neglect and abandonment as a result of the murder and forced expulsion of occupants, changed boundaries, and insensitive development. Adding to loss, traditional preservation values of the time did not particularly esteem the older urban neighborhoods, modest rural villages, and vernacular buildings typically associated with minorities.

Since the fall of Communism, there has been substantial progress in developing accountable monuments protection systems responsive to the new conditions and dealing with issues of democratizing preservation values. Yet efforts to reach agreement on new laws are lagging, and the pace of development is quickening. While the new climate has unleashed considerable interest in preserving historic urban and rural buildings and settings, and holds out much promise for more authentic, inclusive monuments protection, cultural heritage in general and minority sites in particular are in many places still at risk, although today for different reasons than under Communism.

Critical hurdles in crafting new approaches to monuments protection in the post-Communist era include

unclear linkages between central government's traditional responsibilities for monuments protection and growing local authority for planning and development, slashed public funds for preservation planning and projects, limited incentives to encourage private investments in restoration, still-embryonic countrywide and grassroots constituencies, and lack of consensus about the types of regulation compatible with a market economy. For minority projects, a host of additional complex issues arise: incomplete information about sites that are important to multi-dimensioned cultural heritage, the legacy of systemic neglect, and still-unsettled issues arising in connection with restitution, title clearance, and privatization.

Priority needs include: more attention to documentation of diverse historic sites, with the active involvement of persons and groups identified with the relevant cultures; continued progress in transforming national monuments protection law and practice consistent with democracy, decentralization, and a liberalized economy; effective assessments of potential impacts on cultural heritage, particularly in infrastructure investments and restitution and privatization proceedings; and the commitment of more resources and leadership from the international community, lenders, and foundations to catalyze national and community actions to protect and enhance the multi-ethnic and multi-religious heritage of Europe.

1. THE CHALLENGE OF DIVERSITY IN MONUMENTS PROTECTION

1. The Challenge of Diversity in Monuments Protection

The dynamic mayor of Trebic, in the Czech Republic, hopes to restore its ghetto district, one of the oldest and most intact in Europe. Strategically located steps away from the central medieval square, the district has visible signs of gentrification: restaurants, hanging plants, a restored seventeenth-century synagogue, and shops. Young people are said to prefer its central location and evocative dwellings and streets to socialist-built housing blocks on the town's edge. Revitalization faces many challenges: financing modern infrastructure; attracting private investors; clearing cloudy titles of properties whose owners have tragically vanished; and dealing with the social problems of the elderly and Roma who now live in the area.

Pastor Daniel Sovc of the Augsburg Evangelical (Lutheran) Church in Banska Stiavnica, Slovakia, hopes to restore the congregation's handsome eighteenth-century church. Banska Stiavnica, whose now-idle mines once financed the Austrian-Hungarian Empire, was recently named a World Heritage Site. Its residents are poor, discouraged by years of economic decline and totalitarian rule. Father Sovc believes restoring the church's fine building, organ, and mining-related artifacts can "revive the life of the town and spirit of the people."

The Polish Office of Denominations is helping to preserve a 200-year old wooden mosque in Bohiniki (Eastern Poland) built by a Tatar community whose ancestors were fourteenth-century "soldiers of fortune." The religious community wanted to enlarge the mosque, a listed monument and one of only two such buildings in the country. After extensive discussions, the government has decided to help restore the wooden mosque and also build a new mosque.

A private developer is incorporating the ruins of a yeshiva (Jewish school) into the design of a new office building in Warsaw, Poland. The yeshiva, listed as a monument in 1993, is the only remaining vestige of more than hundreds of such schools in pre-Second World War Warsaw. The developer planned to destroy the historic ruins, but was persuaded by protests led by the Society of Friends of Warsaw, a young volunteer group devoted to protecting the city's history.

City officials in Brno, the Czech Republic, hope to save Vankovka, a blighted nineteenth-century factory complex on the edge of the city's historic core. The owners sought to raze the site, but since the complex is a listed monument, were required to offer it first to the state. Supporters seek financing to transform the haunting buildings into a lively meeting place, with galleries, a music center, and retail shops -- a "real place" where Brno residents can "find their roots."

Introduction

"The first step in liquidating a people is to erase its memory. Destroy its books, its culture, its history."¹ And its monuments — the places that evoke for a people shared memories of artistic and architectural accomplishments, joyous and tragic moments in history, heroes and heroines, and the distinctive fabric and flow of everyday life.

There has been much discussion in recent years of the legacy of pollution and other environmental problems in Central and Eastern Europe fostered by Communist ideology, politics, and economics. Far less attention has been given to the extent to which cultural and architectural heritage, as well as natural resources, suffered as a result of abuses endemic to the Communist system. Although there were under Communism some singular preservation achievements in Central and Eastern Europe, the fall of socialism revealed a large gap between pronouncement and reality. Official hostility to many types of landmarks resulted in widespread neglect and loss of historic and cultural fabric. Properties associated with ethnic and religious minorities, already ravaged during World War II, suffered from neglect and vandalism.²

This reconnaissance study was undertaken to examine how post-Communist sensibilities and reforms are influencing change in monuments protection law and practice in three countries in Central and Eastern Europe — Poland, the Czech Republic, and Slovakia — and the extent to which reform includes a democratic expansion of the national patrimony incorporating places associated with diverse minority heritage.

Protection of special places means far more than saving individually significant buildings, important as that is. It is about saving places to recognize, honor, and commemorate the diverse peoples, events, ways of life, and

¹ Milan Hubl, quoted in Milan Kundera, *The Book of Laughter and Forgetting* (New York: HarperPerennial, 1994), p. 159.

² This issue was explored, for the legacy of sites associated with Jewish settlement, in Samuel Gruber and Phyllis Myers, *A Survey of Jewish Monuments in Poland*, 2nd edition (New York: World Monuments Fund, 1995); and *A Survey of Jewish Monuments in the Czech Republic* (New York: World Monuments Fund, 1994).

accomplishments associated with them over the years; to grieve for tragic times and losses; and to inspire dialogue and understanding. It is about saving older neighborhoods, central squares, and ancient landscapes, and doing this in a way that enriches understanding of how places have come to be, and creates opportunities for renewing the spirit and function of communities and economies.

Issues of cultural diversity in historic preservation have been widely discussed in the United States in recent years, stimulated at the grassroots by groups who believed their special heritage was neglected in official policies and advanced nationally by private and government advocates, including the National Trust for Historic Preservation and the U.S. National Park Service. This thrust is consistent with an implicit consensus that ethnic and cultural diversity is a core national value. Despite some critics' views that American history does not present a positive model of cultural diversity (and rising tensions over immigration), the preservation movement generally views the restoration and interpretation of historic places associated with a variety of cultural and ethnic groups as opportunities to "recount our national heritage and ... bind together the diverse elements of American society."³

Public spaces and places, architect and social historian Dolores Hayden observes, have the power to nurture a "profound, subtle, and inclusive sense of what it means to be an American." This identity "is intimately tied to memory: both our personal memories ... and the collected or social memories interconnected with the histories of our families, neighborhoods, fellow workers, and ethnic communities." Even when bulldozed, Hayden argues, "places can be marked to restore some shared public meaning." And in other places, social meaning can be enhanced with projects that are "sensitive to all citizens and their diverse heritage."⁴

³ Antoinette Lee, "Cultural Diversity and Historic Preservation, *CRM*, Vol. 5, No. 7, 1992, p. 3; and Benjamin Schwarz, "The Diversity Myth: America's Leading Export," *Atlantic Monthly*, May 1995, pp. 57-67.

⁴ Dolores Hayden, *The Power of Place: Urban Landscapes as Public History* (Cambridge, MA: MIT Press), p. 9.

Questions posed in the project

Stimulated in part by such discussions, the following questions guided the reconnaissance investigation in Central and Eastern Europe:

- How is historic preservation law changing in post-Communist Central Europe?
- What is the effect so far of these changes on landmark designation and restoration of distinctive buildings and sites?
- Do these changes reflect a broader definition of the national patrimony?
- What monuments and sites are important to historic ethnic and religious minorities?
- What are promising directions for protecting the physical legacy of Central Europe's diverse peoples?

These questions turned out to be even more complex than anticipated. There is, in each of the countries visited, considerable debate over transforming monuments laws and expanding and refining monuments lists. Yet efforts to develop more accountable preservation laws are moving more slowly than supporters had initially hoped.

The sheer size of the challenge is daunting: so much building stock is valuable in historic and architectural terms, and also neglected and at-risk. Moreover, after years of failed top-down planning prescriptions, there is understandable ambivalence about government-designed regulatory measures aimed at influencing private investment decisions in young "free-market" economies. Public budgets for restoration and ministries of culture have been slashed. Tax incentives for preservation, successfully employed in the United States and elsewhere to induce private owners to invest in historic properties, are contested by finance ministries as triggering unwise losses to central budgets. Continuing flux in central and local government structure and embryonic citizen support for monuments and heritage projects are further impediments.

Grappling with the legacy of neglect of multi-dimensioned cultural heritage in official lists of national patrimony and on the ground is a difficult but essential part of transforming monuments policies. An inclusive view of ethnic and cultural diversity has broad benefits for the economic and social well-being of the nation as a whole. A narrow view, in contrast, would perpetuate that sense of apartness of ethnic and religious minorities from the cultural mainstream which has had such tragic consequences.

Priorities

Five priorities seem most important to increase recognition and protection of multi-dimensioned heritage in monuments preservation law and practice in Central and Eastern Europe:

- First, an enlarged view of national patrimony based on increased documentation about what sites are important to diverse peoples. "Lack of adequate information on cultural heritage is perhaps the single greatest obstacle to effective protection," a World Bank report observes.⁵ Active involvement of affected groups in documentation and also in management and interpretation is essential. They have the shared memory and can help identify local experts and often scattered information. Partnerships also make sense on practical grounds: preservation programs are poorly funded. Volunteers and committed advocates are needed to help government survey sites.
- Second, more effective monuments laws and practice. Opening up the monuments protection system to a broader view of patrimony will have little on-the-ground effect if the system is weak or ill-adapted to the new conditions of private ownership, market-driven investments, and decentralization. Expanding the national patrimony calls for progress more generally towards a transparent, effective monuments protection system that is linked to planning, open to citizen involvement, reinforced with strategic

⁵ World Bank, "Cultural Heritage in Environmental Assessment," *Environmental Assessment Sourcebook Update*, No. 8, September 1994.

subsidies and incentives, provides for careful assessments of impacts and options, and has credible follow-up procedures.

- **Third, infrastructure investments aimed at revitalizing existing town centers and rural landscapes.**

Since places associated with historic minorities are often located in older urban and rural settlements, their protection depends also on how and where investments in roads, housing, utilities, water cleanup, and business, including tourism, are made. If these decisions sustain and enhance vitality in existing settlements, historic centers, and rural landscapes, heritage is more likely to survive and prosper.

Environmental assessments are an important and effective tool for organizing information and alternatives and need to be widely used in decision-making on these investments.⁶

- **Fourth, restitution or compensation for seized properties and settlement of titles.**

Throughout the cities and countryside, neglected buildings and orphan parcels abound, their condition the result of illegal seizure by the Nazis and/or Communities and a failure to settle claims. This situation impedes private investment, results in loss of historic fabric, and denies legitimate communal and individual owners and heirs the wherewithal to help document and renovate properties associated with their history. Minorities, while not the only victims of this policy, are more likely to be affected.

- **And finally, elevating monuments protection and cultural diversity on the agenda of European, bilateral, and international organizations with responsibilities for Central and Eastern Europe.**

International assistance to cultural heritage resources has lagged behind support for natural resources and environmental restoration, although there are many similarities. Monuments protection should be more clearly linked to international human rights activities as an aspect of cultural identity. There are also new opportunities for collaborative ventures in projects involving both cultural and natural resources, for example, in biosphere and landscape protection.

⁶ June Taboroff, World Bank consultant on cultural heritage, letter of July 29, 1996.

Chapter II, Overview and Findings, begins with a general discussion of monuments laws and reforms being considered in the post-Communist era. It then examines the pluralistic ethnic and religious legacy of these countries and the expanded but still limited recognition of this heritage in national and regional monuments lists and special landmark categories. An examination of issues involved in strengthening monuments laws in general and giving greater recognition to cultural and ethnic heritage follows. A concluding section examines relevant international activities.

The third chapter presents suggestions for follow-on activities. These include more sharing in the region of country insights and experience in transforming monuments preservation law and practice; assistance to ethnic and religious minorities to help document their heritage; improved planning for infrastructure investments to strengthen center cities; a primer on international and bilateral sources of funds for cultural heritage planning and projects; and exchanges and internships, particularly to enable mid-level professionals to study first-hand the protection and interpretation of places highlighting multi-dimensioned heritage and to learn about their organization, finance, and benefits.

This is a critical time. Neglect and hostility posed serious risk to the country's physical and cultural heritage under Communism. Today, investments in development and infrastructure without good information on cultural heritage or effective protection systems pose another type of risk. The countries of Central and Eastern Europe are poised on the brink of enormous physical change, the value of their multi-dimensioned heritage only partially documented and their legal and economic systems not yet ready for the challenge.

2. OVERVIEW OF FINDINGS

2. Overview of Findings

EVOLVING MONUMENTS LAWS

Monuments protection law and practice in the Czech Republic, Slovakia, and Poland share a number of overarching similarities

Despite substantial differences, monuments preservation law and practice in Poland, the Czech Republic, and Slovakia share a number of characteristics. Each country has a solid tradition to build on, dating back to nineteenth-century initiatives to register buildings of architectural and historic importance, establish institutions, and train cadres of professionals. These beginnings coincide with periods of rising nationalism and shedding of foreign occupation. Civic and religious monuments celebrated events associated with the emergence of new national identities and leadership.

The laws in all three countries have been substantially revised several times in this century: Poland's in 1962 and again in 1990; and the Czech and Slovak laws in 1958 and 1987 when the countries were federated as Czechoslovakia.⁷ A profile of monuments preservation law and practice in the three countries appears in the appendix to this report.

Professionals in all three countries today, reflecting on the experience under Communism, speak of extensive losses to historic fabric as a consequence of intrinsic flaws in the top-down system. Decisions were often arbitrary and selective in a system where the state was administrator, principal property owner, and funder of

⁷ See *Law on the Protection of Cultural Property and on Museums* (Warsaw: Historical Monuments Documentation Center, 1992); and Czech National Council Law No. 20/1987 and Slovak Law 27/1987. An English translation of the 1987 Czech law appears in "State Care of Monuments," *Bulletin of Czechoslovak Law*, Vol. 27, 1-2 (Prague: Jednota Právniku, 1988).

restoration projects. Massive state-sponsored housing and industrial development outside of older cities intruded irrevocably on unspoiled countryside and villages while historic centers stagnated.

The three countries are grappling with this legacy as they attempt to retain the best qualities of their protection systems and adapt law and practice to the profoundly changed political and economic context for preservation: more private property, private investment, and local authority over planning and development, and sharply reduced public money for projects.

In all three countries, preservation officials are working actively with peers in the international community. Since the political transformations, five World Heritage Sites have been named in the Czech Republic and three in Slovakia. Socialist Czechoslovakia did not participate in the World Heritage program, which grants special recognition to sites with outstanding cultural and natural significance worthy of preservation as the heritage of all mankind. One additional site has been named in Poland, which cooperated with the World Heritage program under Communism.

There are also significant contrasts in monuments laws and policies among the three countries

Among the three, Poland has the largest cadre of skilled conservation professionals and artisans, a system most closely linked to European norms, the most comprehensive monuments protection law, and the only post-Communist statute. Changes in the 1990 law include deletion of references to obsolete institutions and recognition of private property and decentralization. Polish conservators, architects, and design professionals achieved worldwide renown for their painstaking efforts in rebuilding Old Warsaw and Gdansk, senselessly razed by the Nazis, and are eagerly sought consultants in many international projects.

The Czech Republic, with a high-performing economy and the inspired example of Prague, has made the biggest leap from Communist days towards a modern historic preservation system. Preservation officials in

the Ministry of Culture, crafting methods to preserve urban and rural character while encouraging private investment, are casting a wide net to learn from other countries about models and tools that are effective in market economies.

Slovakia, created when Czechoslovakia was deconstructed in December 1993, faces the most challenging legacy of insensitive development in Bratislava, its capital, and countryside, and also of recent upheavals in cultural policies. In the 1960s and 1970s, massive renewal projects separated the Old Town from the rest of the city, leveled its historic Jewish neighborhood, and constructed a bridge whose access roads sweep up to the steps of St. Martin's Cathedral, where bells once tolled coronations of Hungarian kings and queens. Divisive changes in cultural policies emphasizing nationalistic directions led in 1995 to considerable turnover in professional preservation and cultural staff.

All three countries are working on revisions to their monuments laws

Officials and professionals in each of these countries have recognized a need for substantial revisions to their monuments preservation laws in the post-Communist era. In Poland, changes under review would go beyond those enacted in 1990 to give stronger emphasis to "the moral and financial responsibility of private users for the condition of monuments and sites," Professor Andrzej Tomaszewski, a leading preservation observed in 1995 (he has since been named Poland's Chief Conservator). Tadeusz Polak, Deputy Minister of Culture and Arts, emphasized the need for a tax structure that rewards private investments in restoration and encourages more "flexibility" than has been the case up to now to adapt monuments to modern institutional and business needs. Without these changes, he feared that the gap between law and reality evident under Communism would continue, albeit for different reasons.

Czech monuments protection officials have been drafting new legislation for several years. Proposed changes include measures more attuned to what Josef Stulc, director of the Czech State Institute of Monuments, calls "the natural relationship between the owner and his property," local self-government, the market economy, and contemporary international theory and practice.⁸ References to socialism and obsolete institutions would be eliminated. Advocates for change favor stronger links between preservation and town planning and subsidies and economic incentives for projects not likely to attract private investors. Other influential officials, including Prime Minister Vaclav Klaus and others in the finance ministries, have taken the view that unfettered market decisions by private owners provide the greatest protections for the environment.

Momentum for amending Slovakia's law, on a fast track in 1994, has since slowed as a consequence of the upheavals in cultural policies noted earlier.

PLURALISTIC HERITAGE AND LEGAL PROVISIONS DEFINING NATIONAL PATRIMONY

Official demographic statistics present a profile of homogeneity strikingly different from the past

Only traces of the region's ethnic and religious diversity appear in official censuses. The numbers suggest the chilling thoroughness with which diversity in the region has been diminished by annihilation, forced emigration, and boundary changes. Adherents of ethnic and religious minorities often claim that official statistics undercount their actual numbers, since the counts are based on self-identification and people may be reluctant to state for the record that they belong to certain minorities. Officials say minorities inflate their numbers to try to increase financial assistance.

Officially, the breakdown by religious affiliation of Poland's population of some 40 million persons is 92% Catholic, and 8% Russian Orthodox, Protestant, and "other."⁹ The Catholic group includes persons of the

⁸ Josef Stulc, "Protection of Historic Monuments in the Czech and Slovak Republics," no date, p. 1.

⁹ Interview with Marek Pernal, Polish Office for Denominations, March 1995.

Greek Orthodox faith -- primarily Ukrainians, Armenians, and Slovaks. There are 400,000 persons of Russian Orthodox faith, 120,000 Jehovah's Witnesses, and 90,000 Lutherans (Augsburg Evangelical). Also, there are small numbers of Calvinists, Jews, Methodists, and several Islamic communities.

In the Czech Republic, 94.4% of its population of 10.3 million are officially identified as Czech and Moravian and 5.6%, "other."¹⁰ Slovakia's 5.3 million residents officially include 85.7% Slovaks, 11% Hungarian, and 3.3% "other."¹¹ (Under "other" are a tapestry of identities. In the Czech Republic, Slovak, 3.1%; Polish .6%; Romany, .3%; and a smattering of Germans, Hungarians, Ukrainians, Russians, Bulgarians, Greeks, Ruthenians, Romanians, Vietnamese, Austrians, and Jews. Slovak minorities include Romany, 1.4%, Czech, 1%, Moravian, .1%, Ruthenian, .3%, Ukrainian; and tiny percentages of Germans and Poles.)

The most serious challenge to official numbers involves Gypsies, or Roma. Although millions live in Eastern Europe, relatively few are counted as citizens. Reliable observers say the official numbers -- in 1991, 75,802 Roma in what is now Slovakia and 32,903 in the Czech Republic -- are off the mark by a factor of three to ten. Also, Jewish communities in Slovakia claim six to seven thousand members while the official population count is three thousand. Ruthenians say they number about one hundred thirty thousand in Slovakia, compared to the official 17,197.

Whatever the real numbers, the physical legacy of these generations of diverse peoples, the subject of this report, although badly damaged by events of the past half-century, has not been totally destroyed -- Lutheran churches and cemeteries abandoned in 1945, Hungarian properties affected by three border changes in this century, Ruthenian villages, Jewish ghettos and cemeteries, Turkish military outposts, Italian and Scottish settlements, Protestant churches turned Catholic and back again, and nineteenth-century industrial complexes where laborers of diverse heritage toiled side by side.

¹⁰ Letter from Petr Muzak, Czech Governmental Council for Nationalities, June 1995.

¹¹ Sarlota Pufflerova, "National Minorities in Slovakia," no date.

Yet, like official census statistics, national monuments lists do not adequately reflect the heritage of diversity. Czech monuments official Stulc, for example, observes, "So far, there has been insufficient recognition of the pluralistic character of Czech lands." His comment is equally applicable to the other countries in this study.

The following discussion examines legal language guiding eligibility for inclusion on monuments lists and presents information on current efforts to expand and refine the lists.

Criteria for monuments designations

Language in the monuments laws of the three countries is silent on issues of multi-cultural and multi-ethnic diversity. The statutes' broad language on the types of sites eligible for monument status is, however, quite consistent with an expansive view of the national patrimony.

Cultural property eligible for listing under the Polish law, for example, includes any "ancient or contemporary object, which is important [to] cultural heritage and cultural development [because] of historical, scientific or artistic value." Categories eligible for listing include works of architecture and urban development, districts, cemeteries, parks, buildings with their surroundings, ethnographic sites, heritage landscapes, and monuments of national history, a new classification added in 1990 for Poland's most precious monuments.¹² The definition of cultural monuments in the Czech and Slovak laws is also broad.¹³ Cultural monuments are defined as "important evidence of the historical development of society ... in different areas of human activity, because of their revolutionary, historical, artistic, scientific and technical value," and sites that "directly relate to important personalities and historical events." The 1987 law added provisions on designating monument zones and reserves, and national cultural monuments, the "most important part of the nation's cultural wealth."

¹² *Law on the Protection of Cultural Property*, Chapters I and II.

¹³ *State Care of Monuments*, pp. 46-47 (Czech law).

Despite the language, actual listings under Communism gave scant notice to ethnic and religious minorities.

In the late 1980s, the author of this report was shown a set of thin files stored in a cubby of the Czech monuments office which contained lists of historic monuments associated with Jewish settlement. Most entries bore recent dates and were classified as "3" or "4," which was said to signal local officials that destruction would not be a problem to central officials. In Poland, where the largest concentration of Jewish population had lived for almost a thousand years, only 8 cemeteries and 72 synagogues had been classified as landmarks in 1964.

The process for nominating monuments

Officially, the listing process is described as a decision of the Minister of Culture, based on collective recommendations by professionals and studies conducted in collaboration with regional officials and specialists. (As in any process, how the decision is really made is likely to differ from the official description. This more subtle evaluation is particularly difficult in the new and rapidly changing governments of Central and Eastern Europe.)

Nominations can be proposed in Poland by ministry staff, voivodship conservators, or owners on the basis of architectural, scientific, and historic values, and in the Czech Republic, by any citizen, in addition to ministry officials and specialists. In practice most recommendations are said to be initiated by ministry professionals. Owners are notified and given an opportunity to comment, but listings can be made without their consent.

The lapse of time between recommendation and nomination has posed a problem in the new era of private investment. Such studies have taken two to three years, or more, to complete. Under Czech law, once a nomination is proposed, there is supposed to be a moratorium on changes until the listing decision is made. Responding to pressures for faster decisions, professional study time has been reduced and funding for

evaluating nominations has increased somewhat, says Kamila Matouskova, the head of cultural heritage protection in the Czech Ministry of Culture.

Recent changes in the lists

What changes have been made in monuments lists since the fall of Communism? Official reviews have resulted in a number of additions and deletions, with a sizable net increase in Poland and the Czech Republic, and a net loss in Slovakia.¹⁴ Monument listings in Poland have increased from about 35,000 to 41,520, and in the Czech Republic, from 34,000 to 38,000. In contrast, Slovakia's list was reduced from 12,443 to 11,732 entries (1,451 removed, and 896 added) in 1991 alone.¹⁵ Deleted entries are primarily buildings found, on inspection, to be destroyed or irreparably damaged or associated with the socialist era.

In the Czech Republic, new entries to the monuments list include more buildings associated with neglected historic figures, churches and convents, castles and manor houses, industrial heritage, nineteenth- and twentieth- century architecture, and important Jewish sites. The Brno Regional Institute for Monuments Protection, which has responsibility for monuments in Southern Moravia, has been especially active. The region's rich natural and cultural resources are reflected in its 8,600 listings, considerable private investment, and the activities of international preservation and environmental organizations, including the World Monuments Fund, Czech Greenways, the Atlantic Center for the Environment, and Project for Public Spaces. Despite a staggering workload, the institute has taken on new initiatives, such as documenting the region's 290 castles, extensive legacy of Jewish sites, and Brno's functionalist architecture.¹⁶

¹⁴ This assessment is based on an examination of selected lists, including information from local and regional offices, inventories of Jewish sites in Slovakia, and a revised list of "national monuments of culture" in the Czech Republic and interviews with officials and others. While there has been considerable progress in computerizing and centralizing monuments records, a complete monuments register or list of recent additions was not available. Monuments records have until recently been stored in old-fashioned folders and files in local and regional offices, and the completeness of documentation in central offices is still uneven.

¹⁵ *Informator*, Archiv Pamiatkového Ustavu (Bratislava, 1994).

¹⁶ Interview with Zdenek Novak, then Director of the Regional Institute for Monuments, Brno, and since named Deputy Minister of Culture.

Listing activity has also increased in Poland in recent years. The early 1990s saw a rush to list surviving Evangelical Augsburg churches along the western border whose German congregants had been expelled after the end of World War II. Many buildings had been destroyed, but others were adapted for Catholic use or left empty. Another major change involves additional monuments designations for Jewish sites, which by 1994 totaled 172 cemeteries and about a hundred synagogues.¹⁷ Listing activity is said to be slowed now because of the workload in evaluating recommendations and also the concern of officials about registering more monuments in poor condition when there is little public money to help restore them. The implicit promise of monuments listing under Communism was that state funds would follow, in contrast to the United States, where listing is often used consciously as an incentive to private investors.

In Slovakia, no information was available on recent additions to monuments lists. The official priority placed by Prime Minister Vaclav Meclar and his followers on documenting sites of Slovak origin will likely increase the listings of such sites. The government's stated interest in a comprehensive survey of Slovakia's Jewish sites has so far not materialized. On his own, a young medical student is traveling around Slovakia photographing the evocative remnants of hundreds of synagogues, cemeteries, and communal buildings. A number are in very poor condition and have experienced recent vandalism.

Nominations based primarily on historical and cultural significance, rather than on architectural quality, offer one route for broadening recognition of neglected contributions to mainstream culture. Irena Rohac, an historian on the staff of the Slovak Institute for Monuments, for example, is coordinating recommendations for new monuments listings associated with well-known personalities who in the past could not be discussed openly. Recommendations, based on archival research, will be evaluated for authenticity and significance by the Slovak Academy of Science. Among those being studied are Jozef Pito, a nineteenth-century Roma

¹⁷ Eleonora Bergman, "Monuments of Jewish Culture in the People's Republic of Poland," a paper delivered at a conservators' conference, Kazimierz Dolny, Nov. 1994.

musician and two Greek Catholic priests with heroic records in the period after the Second World War. If nominated, these would be the first official monuments in Slovakia associated with Roma or Greek Catholics.

In Poland, some remnants of Jewish institutions, such as school and community buildings, which formerly existed in large numbers, are also being landmarked for historic, rather than artistic, or architectural, quality. Assessments for designations based on historic values are said to trigger longer study by ministry staff.

Special designations: historic towns, reserves, zones, landscapes, and national monuments

Several protection categories present special opportunities for incorporating a broader, more inclusive vision of monuments protection. One category, variously labeled zones, reserves, and landscapes, is aimed at providing a broad overlay of protection for larger urban and rural landscapes with combinations of values -- distinctive structures, urban and rural spaces, and archeological remains. Another is the core group of sites chosen to represent the nation's most precious cultural and architectural heritage. These are called "monuments of history" in Poland and "national monuments of culture" in the Czech Republic and Slovakia.

Historic towns, reserves, and landscapes. Among preservationists, one of the most widely discussed topics concerns ways to safeguard the cultural and natural heritage of larger urban and rural landscapes by establishing broad protection zones. These designations are especially important also to the legacy of small, vernacular buildings and neighborhoods often associated with minorities, many of which might not pass the test of individual listing.

While not new, this approach has fresh relevance in Central and Eastern Europe precisely because there are still so many admirably intact historic centers and rural landscapes; and opportunities for investment and development are actively sought and welcomed. How can authentic historic, architectural, and environmental fabric and character be retained in these places as they accommodate change, sometimes rapid and market-

driven change? New issues of flexibility and adaptability are weighed against the cumulative homogenizing effects, evident throughout towns and villages, of even seemingly minor change in windows, roof lines, height, and decorative details.

The challenge is of course not limited to Central and Eastern Europe, but rather worldwide, as Polish Chief Conservator Tomaszewski observed at a 1993 conference on cultural heritage. Safeguarding cultural heritage, he said, requires a holistic approach that encompasses "the whole historical, archeological, artistic, architectural and town planning heritage [and] requires not only collaboration among specialists in many new disciplines but also the participation of local, regional, and international political authorities."¹⁸

In Poland, the decades-long experience in historic towns is being examined as a basis for on-the-ground policy changes in development of plans, coordination between local authorities and the voivod conservators, issuance of building permits, and possible subsidies and incentives. Despite some remarkable town planning and restoration achievements under socialism, the era of top-down, state-funded restoration provides limited guidance today. A paper prepared for the Ministry of Culture by an expert group of advisers on monuments policy observes that despite many studies, there is no "precise definition of sectors to protect in a historic city, and of detailed conditions of conservation." The paper presents a rationale for different types of intervention and management according to the degree of existing architectural and cultural integrity, combinations of historic, complementary, and inappropriate development, and prospects for restoration and reconstruction.¹⁹

In the Czech Republic, the landmark categories of monument reservations (a "complex of monuments") and monument zones ("a lesser share of cultural monuments and landscapes") were added in the 1987 law. Early in the 1990's, officials conducted a comprehensive review of the hundreds of reserves and zones that had been

¹⁸ Andrzej Tomaszewski, "An International Strategy for the Cultural Heritage," in *Heritage Landscape* (Krakow: International Cultural Centre, 1993), pp. 102 and 108.

¹⁹ Michal Witwicki, Center for Documentation of Historic Monuments, Group of Experts, Interdepartmental Commission for the Development of Cities and Historic Urban Ensembles (no date).

designated and found both extensive loss of historic and landscape values and economic stagnation. Accordingly, officials with cross-cutting environmental, cultural, and financial responsibilities crafted an urban regeneration program to refine the designation process and also to revitalize local enterprise. The ministries collaborate in selecting protected areas and targeting financial assistance to development projects.²⁰ There are now 40 town reserves, 210 town zones, 60 village reserves, 158 village zones, and 2 landscape zones. Although a national program, it emphasizes local action and requires improved town planning as a condition of participation.

The Foundation for a Civil Society has launched a promising initiative, the Czech Center for Community Revitalization, based in Prague, to draw on expert advice and best practice from Central and Western Europe and the United States to help national and community leaders identify and adapt strategies to deal successfully with issues of revitalizing local economies while protecting historic and architectural integrity and character.

Slovakia has 17 town monuments reserves, 10 folk architecture reservations, and 70 monuments zones. In Kosice and Bratislava, good collaboration between local planning and elected officials with those responsible for monuments policies was evident, although in other places the advice of regional monuments offices seemed to be out of the development loop.

National monuments. This inner core of sites is the closest approximation of what might be called the nation's concept of its patrimony. Not surprisingly, the lists have seen considerable change in recent years.

In the Czech Republic, a recent review led to the addition of 58 national cultural monuments and deletion of about a dozen, for a new total of 130 sites. Interesting additions from the perspective of religious and ethnic diversity are the thirteenth-century Altneuschul in Prague, the oldest continuously functioning synagogue in

²⁰ Czech Ministries of Culture, Economic Policy and Development, and Ecology, "Program of Regeneration of Municipal Monuments Reserves and Municipal Historic Zones." Files No. 4/189/92.

Europe, and the nineteenth-century mining town of Ostrava. Other additions -- all would have been anathema under socialism -- include a Mies van der Rohe villa in Brno, a twentieth-century functionalist gem; castles, including Valtice and Lednice in Southern Moravia (centerpieces in an ambitious greenways/cultural heritage project), Catholic churches, convents, and monasteries. Deletions involve sites judged today to over-emphasize recent socialist history.

In 1994, Poland's Parliament designated its first monuments of history by setting boundaries around historic sections in fourteen cities and towns.²¹ Local officials are directed to include the bounded areas in their planning, and to adopt appropriate zoning and other protective measures in consultation with voivodship conservators. Since a number of these special zones have multi-layered cultural heritage, this initiative could spur more authentic heritage planning. The law does not specify what monuments will be protected or provide special resources or tools to local governments, however. Its significance appears to be the fixing by national authorities of legal boundaries around the areas set aside for special protection. This action could strengthen the authority of the voivodship conservator in decisions on proposed changes to buildings in these areas and elevate protection in the local decision-making process.

Slovakia has 70 national cultural monuments. No further details were available on post-Communist changes.

Both the historic town and landscape concepts and the special national cultural monuments designations hold a good deal of promise for managing larger areas to conserve and enhance historic integrity, including granting more recognition to minority sites. It will be important for interested groups to play an active role in these initiatives to ensure that their potential for authentic minority-sensitive conservation is realized.

²¹ See *Monitor Polski, Dziennik Urzędowy Rzeczypospolitej Polskiej*, Warszawa, September 16, 1994, Nr 50.

ISSUES IN REFORMING MONUMENTS LAWS

The previous section discussed the process for monuments designation and implications for cultural diversity. Since the protection of landmarked minority sites depends on improvements in the process for all registered sites, this section looks at several major issues in reforming laws and practice to enhance protection of properties after the decision has been made to include them in the national register.

A new balance is needed between traditional central authority in monuments policies and local planning and development authority

In all three countries, the system for reviewing proposed changes to monuments is in flux. Protection of listed monuments continues to be centrally organized, with officials employed by the Ministry of Culture posted in regional offices. Local governments have become stronger players in the development process. They are elected and empowered with decision-making authority in planning, development, and raising revenues. Municipalities also own properties, including historic buildings, as a result of transfers from state ownership, and can be joint partners in restoration investments.

Poland's 49 voivodship (regional) conservators have the strongest authority under law for monuments protection among the countries examined in this report. Owners of listed monuments who wish to modify their buildings in any way must obtain a permit from the conservator in the voivodship where the property is located as a condition for receiving a town permit. (Local officials are required to consult with voivodship conservators before granting permits for changes to properties protected under general historic town designation rather than individual listing, but are not required to follow their opinions.) Trends since 1990 which have weakened regional governance in Poland, however, have also arguably weakened the authority of conservators. An appointee of the Ministry of Culture, the conservator is a representative of central

government and a ministry with little money to hire staff or to offer owners for meeting conditions attached to a permit for restoring a monument.

This does not necessarily mean that preservation values are neglected: a number of mayors and local officials are very supportive of preservation and some employ their own conservators. And central government conservators' decisions carry considerable sway because of widespread respect for their traditional role and competence. (See profile of Polish preservation law in the appendix.)

In the Czech Republic, district councils must consider monuments officials' professional opinions in granting building permits for modifications to individually landmarked sites and those protected in zones and reserves, but are not obligated to follow it in either instance. Most local regulations and ordinances do not yet adequately take preservation values into account, says cultural heritage official Matouskova, who talks about the need for standards of appropriate development in historic areas to guide negotiations about proposed changes. With the exception of historic towns in the urban regeneration program, planning is not serving as a preservation tool, she says, and the result is "loss of town character."

Slovakia experiences similar tensions in the relationship between regional professional staffs responsible for monuments protection and district officials who approve development permits. A 1995 law on cultural heritage seems to give monuments protection a higher priority than town development plans but lacks details on how this will be put into practice.

Financing for cultural resource protection is limited and increasingly looks to private sources

While the process under Communism was typically opaque, once a decision was made to restore a monument, evidently funding followed. This had admirable results, as in the dramatic rebuilding of Old Warsaw, but sometimes unfortunate ones, critics say, when too much money was given to politically motivated projects.

While the situation is much changed, of course, good information about programs and public budgets is still difficult to obtain. The following discussion of public funding for monuments protection, based on conversations with officials and some documentation, undoubtedly has gaps. It also touches only briefly on the private, church, and international sources which are increasingly important in restoration projects.

Of the three countries, the Czech Republic has developed the most promising new state financing for monuments protection. Although the amounts are modest, the programs try to use limited money strategically, and reward leverage and partners. Grants initiatives include one program to help save architectural heritage and another, administered with the ministries of the economy and ecology, to finance enterprise-related restoration projects in historic towns targeted for urban regeneration. In 1995 the program to save architectural heritage provided 300 million Kc (Czech crowns), or almost \$US 10 million, in grants to restore castles, chateaux, and religious buildings (including several synagogues). The urban regeneration program provided another 300 million Kc in matching grants to private, church, and municipal owners of historic buildings in targeted historic zones. Matches range from 10 to 70 per cent. There is also an emergency fund of 45 million Kc, or about \$US 1.5 million, from lottery revenues.

Preservation activities may also be funded from general state assistance to municipal governments or municipally raised funds. State moneys -- amounting to 600 million Kc in 1994 and 800 million Kc in 1995, or about \$US 20 million and \$US 27 million, respectively -- are passed through district councils. Because needs are so extensive, access is highly competitive. Municipalities also have their own revenue sources, including income taxes, the largest source of locally raised funds.²² There is no overall information on how much municipalities are spending on preservation projects. The general impression is "not much," but this varies with the town and in some places is significant.

²² Information provided by Kamila Matouskova. Also, see Robert E. Firestone, *Local Finance in the Czech Republic* (Washington, D.C.: The Urban Institute, 1993), p. 12.

In Poland, preservation subsidies of up to 23 percent and even higher in special cases are theoretically available under law, but funds are very limited. Poland has little in the way of taxes or incentives for conservation: property taxes are low, there is no inheritance tax, and the income tax is dedicated to the central budget. There is some relief from VAT taxes for buying materials for conservation projects, but none for planning and professional staff.

Cities and towns are potential sources of funds for historic preservation, since they share revenues from business and other taxes and some town economies are doing quite well. Knowledgeable observers say that monuments protection is not a financial priority in most municipalities.

Krakow is a special case. Its National Fund for the Restoration of the Monuments of Krakow was established in 1978 as a state line item in recognition of the city's designation as a World Heritage Site. The Krakow Fund, which gives out 150 billion zlotys (or about \$US 5.5 million) annually, has been administered by a panel of public and private experts since 1991. Reflecting the vision of Krakow as an historically multi-cultural city, with a distinctive Christian-Jewish legacy, grants have recently been diversified. They include restoration projects for several synagogues and a nineteenth-century Jewish prayer-study house that has been adapted into a conference and educational center. Development of the center was the first project in Krakow to preserve an historic exterior and completely transform the interior to accommodate contemporary needs.

Slovakia's ProSlovakia Fund was created in 1991 as one of the first actions of the post-Communist Ministry of Culture. Its sixteen commissions, advised by nongovernmental experts, have assisted diverse cultural, media, educational, and programs for ethnic minorities, in addition to monuments conservation projects. The ProSlovakia Fund once amounted to .5 percent of the state budget, and provided some 120 million Slovak crowns, or \$US 4 million, in matching funds for restoration. Future funding for ProSlovakia and its availability for minority-proposed projects was uncertain in 1995.

Independent access by municipalities to tax revenues is limited in Slovakia and thus more dependent on state favor.²³ This could affect restoration in Bratislava and Kosice, where budget allocations were significantly reduced in 1995. Their elected mayors have been very supportive of preservation: Kosice's mayor has used funds from municipal rents and revenues to help private owners fix up historic facades, while Bratislava's mayor, assisted by city architects, planners, and monuments officials, has actively spurred an impressive group of restoration projects involving privatized and municipally owned buildings in the Old City. He has embarked on a project to attract private investors to rebuild part of the Old Jewish town, destroyed during and after the Second World War, by investing public funds in modern infrastructure.

Some historic cities and towns have established foundations to seek funds and partnerships for economic revitalization

Several towns visited for this project -- Trebic, Boskovice, and Rychnov nad Kneznou in the Czech Republic, and Kosice, in Slovakia -- have established local foundations to market their towns, raise private and international funds for revitalization and restoration, and seek creative partnerships. While not necessarily aimed at protecting minority heritage, such foundations could be an effective way to raise money from ethnic counterparts abroad or sympathetic foundations and corporations. Several of these efforts report some success. (See discussion on the Trebic Fund, below.) Overall, this promising direction has so far had limited impact. Ambivalent national laws have not encouraged the formation of private groups, foundations, or tax exemptions for moneys raised privately or through creative enterprise.²⁴ Also, these countries have not had a tradition of philanthropy and voluntary grassroots associations, or experience in marketing and fund-raising. It is important to examine systematically how these foundations are progressing, what approaches have proven effective, what impediments have arisen and how these have been overcome, and how the case for heritage preservation is most effectively advanced by local officials and supporters to private and international partners.

²³ ICMA Consortium Report, *Local Finance in the Slovak Republic: Final Report, Central and Eastern Europe Local Government and Housing Privatization*, Dec. 1994.

²⁴ The Czech government finally approved in 1996 a new law that will encourage private associations and foundations.

New demands on the legal system

Traditional monuments laws and spare government legal staffs face unfamiliar challenges as a result of countries' rapid changeover to free markets and private property. In the past, official decisions were rarely questioned, and landmarks were state-owned. Officials did not have to explain why and how decisions were made. "Thousands of historical buildings were destroyed under the previous government just because no one was personally responsible for them," says Czech monuments official Szulc.

The introduction of private ownership also brings demands from the new owners for accountability in government decisions. Says Albert Soldani, Legal Adviser of the Polish State Service for Monuments Protection, "We say [to developers] 'you can't do that.' The developers' attorneys ask, 'Where does it say that? Show me.'" Developers' lawyers are often better paid than their government counterparts. Private owners complain that the process lacks transparency and is unreasonably drawn-out and cumbersome.

Meanwhile, the volume of appeals, which are settled administratively at the ministry level in Poland and at the regional level in Slovakia and the Czech Republic, is growing. The number in Poland doubled in 1994 while the size of the legal staff remained the same. There are four professionals on the legal staff in the Czech monuments office. Four others are available on a shared basis with other departments. In Slovakia, the monuments office had no legal staff in 1995. A small staff at the ministry level is responsible for looking into serious infractions and also has been involved in drafting a new historic preservation law.

Follow-up on monuments decisions is an acknowledged missing link

Under Communism, there was little attention to follow-through after a permit was issued to ensure compliance. "The presumption was that everything belonged to the state, so there was no problem," observes Polish Ministry of Culture Deputy Director Polak. The 1990 amendments to Polish law created a State Service for the Protection of Monuments to monitor compliance. The service has some seven hundred employees, a

number of whom work in the field. The Czech monuments office has been developing recommendations to strengthen its field capability, but is constrained by official reluctance to enlarge bureaucracy.

In Slovakia, budget cuts have sharply reduced monuments personnel in the field. The problems are also political: regional monuments officials may see violations of the permit process but find their protests ignored because of mayoral or other official support for the developers.

In all the countries, penalties are absurdly low, and even if collected, often are not a deterrent.

Community support is critical and growing, but still embryonic

Effective historic preservation policies, and especially those concerned with diversity, depend on citizen involvement. One hears repeatedly that the Communist era has left a legacy of passivity among citizens and that laws that do not encourage effective citizen participation. Statutory language in Communist monuments protection laws placed responsibility for monuments protection on the state, or on people as a whole acting through the state. In effect this meant that no one was responsible. Gaps between law and reality were an accepted part of life.

Poland was the first socialist country in the region to allow the formation of citizen associations, in 1984. Soon after, the Polish Citizens Committee for the Protection of Monuments was revived, following years of dormancy, and an effective subgroup was formed to work on identifying and caring for historic Jewish sites and cemeteries. Counterparts for Ruthenian and Ukrainian monuments were also set up. Grassroots citizens groups formed in some historic towns, such as Kazimierz Dolny, a charming village that has been a retreat for architects, town planners, and design professionals. Here, local sentiment helped fend off intrusive change to the town's legacy of buildings dating back to its days as a port city for Baltic trade, and also in restoring a synagogue and building a poignant memorial to Holocaust victims.

For the most part, however, citizens and youths concerned about environmental abuses have focused on such actions as cleaning up pollution of water and air. With the increase in the pace of development, grassroots action on behalf of monuments protection is growing, especially in large cities such as Warsaw and Krakow, Prague, and Bratislava. Bratislava Mayor Peter Kresanek was re-elected in 1995 on a platform that strongly supported preservation of the city's architectural heritage. Mayor Pavel Herman of Trebic, in the Czech Republic, also a strong supporter of preservation investments, was similarly re-elected for a second term.

Still, reversing citizen passivity fostered by decades of totalitarian rule will take time, even if statutes encouraged the formation of nongovernmental organizations and citizen participation more than they do. (In Slovakia, since the reconnaissance for this report was conducted, laws seen as repressive to nongovernmental organizations have been approved.)

Environmental and cultural protection call for collaborative planning mechanisms

Another emerging issue is the convergence of historic and natural environmental policies in protecting larger landscapes -- historic centers distinctively defined by surrounding forested and farmed countryside, for example, old mining and railroad areas in scenic mountainous areas, greenways, and other monuments and their natural settings. Ironically, administrative bodies in Central Europe historically combined nature and cultural policies in a single statute and ministry. Separation of these bureaucratic responsibilities accompanied increased attention following the fall of Communism to the urgent issues of pollution and degradation of natural resources. Now, the shift in protection strategies from individual buildings and sites to landscapes and other large-area planning calls again for closer coordination among responsible officials and agencies.

NEGLECTED PLURALISTIC HERITAGE: THE EXPERIENCE OF SELECTED ETHNIC AND RELIGIOUS MINORITIES

Insofar as time allowed, discussions were held with officials, academics, professionals, and advocates of various ethnic and religious minorities on issues related to monuments policies. The following section provides a more detailed discussion of these issues as they bear on the situation of the Roma, Hungarians in Slovakia, and Jews.²⁵

Jewish groups in Poland and the Czech Republic have made great strides in documenting heritage

There has been considerable progress since Communism's fall in documenting the remnants of significant sites associated with the once-substantial Jewish presence in the region. In the difficult socialist years, the vacuum left by the murder and emigration of rightful owners during World War II meant that properties were especially vulnerable in postwar years to inappropriate new development, neglect, and vandalism.

In Poland, which had the most substantial pre-war Jewish population in cities and rural villages, some professionals and committed individuals managed to identify and protect some sites and cemeteries, often steering around official hostility or remaining alert to shifts in political receptivity. A valuable publication on vanished Jewish wooden synagogues, authored by architects and town planners Maria and Kazimierz Piechotka, was published during one of these "windows of opportunity" in 1956.²⁶ In the 1980s Jan Jagielski, Eleanora Bergman, Monika Krajewska, and others pioneered efforts to record and protect orphaned Jewish cemeteries and synagogues.

²⁵ The author's prior work on issues of the Jewish historic and cultural legacy provided the basis for productive discussions in a brief period, while for Roma and Hungarians more time was needed to identify the right people and develop trust.

²⁶ Maria and Kazimierz Piechotka, *Wooden Synagogue*: (Warsaw: Arkady, 1956).

In socialist Czechoslovakia, a similar situation prevailed. Official hostility and neglect of Jewish heritage contrasted sharply with tourists' favorable impressions of tolerance gained during visits to Prague's ghetto and religious services in the Altneuschul. Committed professionals such as Arno Parik at the Jewish Museum, which the Nazis had chosen as a final collection place for plundered treasures from Bohemia and Moravia, researched and protected objects as best they could but were severely constrained. Jiri Fiedler, a state-employed editor, biked around the countryside recording changes to historic buildings, streets, and communities, focusing especially on places where vanished Jews had lived.²⁷

The advent of democracy surfaced such experts and revealed stores of scattered knowledge. Initiatives were organized to gather existing information and record memories systematically. Officials became more receptive, and so did Jewish community leaders, whose priorities were understandably focused on the pressing welfare needs of the living. Small country grants were found to finance some research, exhibitions, and publications, and limited financial assistance from abroad was welcome. Official receptivity, cynics say, is easy, because so much of the Jewish population is gone and officials are interested in tourists' dollars. Whatever the motivation, the extent and variety of collaboration and partnerships are impressive.

Most importantly, the realization that despite all the destruction, so much of architectural, historical, religious, and cultural value remains has sparked worldwide interest in efforts to rescue and preserve these remnants as tangible links to a thousand years of lives and culture.

Sites associated with Roma have sparse documentation or recognition

The Roma, Europe's largest stateless minority in Central and Eastern Europe, have few monuments, memorials, tablets, or cultural centers. In Poland, an interesting museum is located in Tarnow, the work of ethnographer Adam Bartosz, and there are several local memorials, including one in Warsaw. In the Czech

²⁷ See Jiri Fiedler, *Jewish Sights of Bohemia and Moravia* (Prague: Sefer, 1991).

Republic, a marker was laid in June 1995 at the site of the Lety camp in Bohemia. This controversial effort to mark the site of a World War II Roma internment camp was undertaken at the behest of Paul Polansky, an American of Czech descent. A Roma museum is planned in Brno, the second largest city in the Czech Republic located close to its new eastern border.²⁸

This paucity of sites associated with Roma reflects to some extent the same situation facing other minorities: prejudice and modest dwellings and neighborhoods. There are several important differences. One is that the Roma are a large and growing political presence with pressing needs and demands, including citizenship itself. This affects their agenda of priority issues, and perhaps also officials' inclination to designate sites that could be gathering places.

There is another distinctive issue: to what extent does the sparseness of sites also represent unique Roma perspectives on the relevance of "place" to cultural identity? During the reconnaissance, questions posed to Roma leaders and experts about places that might hold special meaning were treated almost invariably as oxymorons. Roma are on the move, one hears again and again, both because they are forced to and want to. Government officials, if asked, often describe the link between historic buildings and Roma in negative terms: they ruin historic buildings. Roma have often been housed in abandoned older properties without clear title -- for example, those formerly occupied by Jews or Germans -- and are accused of damaging valuable properties further by burning wood ornaments and doors for heat, or by illegally inviting large families to stay in small quarters.

Clues about Roma attitudes about place and remembrance in writings are complicated by the fact that the Roma are diverse peoples variously influenced by the cultures in which they have lived and also tragic victims of forced resettlement. Roma stories, for example, tell about unhappiness in an agricultural settlement colony

²⁸ Letter from Karel Holomek, Oct. 1995.

to which a number were sent and the longing to return to the forest. But it is not clear whether this imagery is connected to a *specific* forest or rather to a generic ideal of freedom.

According to Jerzy Ficowski, the Gypsy folk song speaks of "things eternal and ever-topical — love, death, poverty, flight, loss of liberty, traveling, etc. but it does not usually record names of places or concrete events." The songs, says Ficowski, are "laments without a historical background of place and time."²⁹

Nicolae Gheorghe, a leading Roma advocate who heads the Ethnic Federation of Roma in Romania, speaks of their distinctive multi-territorial orientation — regardless of whether those involved are nomadic or settled — that does not fit the standard pattern of "national" or "historic" minorities. He acknowledges that the concept of multi-territoriality is difficult to apply at a time when ethnic minority cultures and identities are being formalized within larger "national" cultures.³⁰ George's recommendations for preserving cultural heritage advanced at a 1993 Council of Europe meeting include greater access for Roma to financial and organizational resources allocated for minority culture.

Without denying a distinctive cultural orientation, one must wonder to what extent historic prejudice among the non-Roma, and lack of trust among Roma, may be creating a self-serving situation. The fact is that many Roma have been settled for decades. Besides, wandering people also have their gathering sites, traditional routes, shared memories of celebrations and trauma, and persons who made a mark on group history. France, for example, has known traditional Roma religious pilgrimage sites. It is important to test the conventional wisdom about Roma lacking attachment to places and history far more than it has been, in dialogue with Roma leaders, academics, historians, and others.

²⁹ Jerzy Ficowski, *The Gypsies in Poland: History and Customs* (Interpress Publishers, Yugoslavia), p. 109.

³⁰ Nicolae Gheorghe, "Dealing with Multiculturalism: Minority, Ethnic, National and Human Rights," *Gypsies in the Locality*, report on a colloquy held in Slovakia, Oct. 15-17, 1992 (Council of Europe Press, 1994), p. 97.

It may be that the Roma in Central and Eastern Europe prefer to keep their special sites and memories private, within their community, safe from contamination or desecration by outsiders.³¹ That is their right, and it is understandable, but it is not the same as saying that protecting and marking their places of history would not have value for them, and increase understanding by others. It would be a loss not to look for and seize opportunities, for example, in industrial, rural landscape, borderland, or urban projects.

The sizable architectural legacy of the Empire in Slovakia may be at risk

Slovak territory was ruled by Hungarians from the early tenth century until the dissolution of the Empire in 1918. Hungarian borders have changed several times and both countries have as a consequence a special relationship to formerly owned properties and cultural treasures on the other's territory. While the six hundred thousand persons in Slovakia who identify with the Hungarian minority disclaim territorial ambitions and Slovaks say that they are not trampling on the legitimate exercise of minority rights, there has been suspicion on both sides. Slovakia and Hungary have concluded a treaty which binds each nation to preserve the other's historical and cultural monuments and memorial sites located within their territory.³²

Several comments were heard during the reconnaissance that fine buildings associated with the centuries of Hungarian rule were being neglected or their identification blurred. This would not be surprising. Central Europe has a history of statues being toppled and the language on historic markers changed – along with street and town names – with shifting political, linguistic, and ethnic winds. The Bratislava bridge stands as testimony to the relationship between new development and gratuitous slights to ethnic cultural heritage. However, the neglect of monuments in Slovakia today seems more generalized, the consequence of the Communist legacy and the lack of funds in public coffers. As a leading Hungarian preservationist observes:

³¹ Pressures on Roma communities in the Czech and Roma communities make this a difficult time to explore these issues, Sybil Milton, Senior Historian of the U.S. Holocaust Memorial Museum, observes. Letter of June 20, 1996.

³² *Treaty on Good Neighbourliness and Friendly Co-operation between the Slovak Republic and the Republic of Hungary*, Art. 13.

"We are aware that very little money is spent on monument preservation in Slovakia, perhaps even less than in Hungary, and this results in the critical state of a number of monuments."³³

Under socialism, buildings associated with the Empire were not exactly in favor. Moreover, urban renewal, construction of *panelacs* (the Slovak word for prefabricated housing blocks), and industrialization under Communist rule was particularly brutal in Slovakia's countryside. Separation in 1994 from the Czech Republic and the establishment of Bratislava as a capital city has in fact stimulated privately financed restoration. Buildings associated with the Empire seem included in this trend, especially since these are the types of buildings that banks, embassies, and corporate investors covet. Also, many Slovaks see the architectural heritage as theirs, not "Hungarian," which is not surprising in the light of history.

At the same time, leaders of the Hungarian minority see threats to their broad cultural agenda in the government's focus on distinctive Slovak cultural contributions. This agenda includes special education and use of their language in areas where they are concentrated. Such perceived threats, and not monuments policies per se, were uppermost on the mind of Hungarian leader Peter Huncik, director of the Sandor Marai Foundation in Bratislava, Slovakia, and others during August 1995 interviews. (Laws establishing a single state language and redistricting have since been approved.) Huncik did comment favorably on the foundation's recent acquisition of the home in Slovakia of its namesake, Sandor Marai, a prominent writer of Hungarian descent, and his plans for restoring the building as a small museum, writers' retreat, and coffee house.

Exemplary models: The Jewish Museum in Prague, and Trebic, Czech Republic

Despite certain unique features, several exemplary models provide valuable and inspiring lessons about directions for finding partners and financing: museums taking on broader roles as documentation specialists

³³ Letter from Andras Roman, International Council on Monuments and Sites, May 21, 1996.

and stewards of cultural heritage and community educators, for example, and places where protection of minority sites is welcomed as making a positive contributor to local and regional economic development.

Jewish Museum in Prague, Czech Republic: Documentation, Stewardship, and Education

The Jewish Museum in Prague, known to tourists as a "must" place to visit in Prague, has emerged from the dark days of Communist control with a broad mission in documentation, education, and stewardship of its vast collections of Judaica, gathered by Nazis primarily from Bohemia and Moravia. The Museum, returned to Jewish community ownership in 1994, is now organized as an autonomous institution, financed by fees, publication sales, revenues from several restituted buildings, state funds, and contributions from abroad. In 1995, its renowned cemetery, synagogues (several under restoration), and exhibits were visited by 1.9 million persons, Jews and non-Jews alike, who paid 42 million Kc (or about \$US 1.4 million) in entrance fees.

Costly restoration and reconstruction of a number of other buildings under its care, inventorying and cataloguing the collection, and renewing and reconceptualizing permanent exhibitions are among the projects and plans being developed under the leadership of Dr. Leo Pavlat, the museum's director.

Dr. Pavlat has a special feeling for the objects and buildings entrusted to the Jewish Museum, and the history they evoke of past lives and lost communities. The museum has engaged former state editor and author Jiri Fiedler to computerize his incredibly detailed knowledge of Czech town plans, Jewish community history, and distinctive buildings. Fiedler served as coordinator of the survey of Czech monuments sponsored by the U.S. Commission for the Preservation of America's Heritage Abroad, which was authorized by the U.S. Congress to help document the vestiges of historic sites associated with the heritage of its citizens abroad and to work with governments on measures to protect them.³⁴

³⁴ *Survey of Historic Jewish Monuments in the Czech Republic.*

The Museum shares its documentation with the Ministry of Culture and the State Institute for Monuments Protection. The information is also helpful to community work on privatization and restitution settlements.

Active educational outreach in the Czech Republic is also a principal activity. Museum exhibition director Arno Parik works with local communities to spark a network of regional museums. About six regional museums have been established and more are planned. These are typically housed in restored historic buildings and exhibit artifacts from the community and regional selections from the Prague museum.³⁵ The museum also works in partnership with local officials and communities on identifying and caring for sites, and developing educational programs.³⁶

Trebič, Czech Republic: Linkage to Community Revitalization

The historic town of Trebič, in southwestern Moravia, Czech Republic, is targeting municipal investments in a revitalization plan which envisions its cultural and architectural assets, including the historic ghetto, one of the most intact in all of Europe, as catalysts for development.

Trebič was founded in the early twelfth century along the Jihlava River. Its active Benedictine monastery attracted an active settlement of Jewish merchants. Today, Trebič's Mayor Pavel Herman and town architect Lubor Herzan are taking the lead in a multifaceted effort to preserve the historic zone in a modern, thriving city with a growing population of 40,000. The plan includes restoration of the Romanesque Gothic Basilica, castle, and environs, and the Jewish ghetto and cemetery;

³⁵ Ruth Ellen Gruber, Jewish Telegraphic Agency, Oct. 30, 1995.

³⁶ In Poland, the Jewish Historical Institute of Warsaw is becoming increasingly active in documentation, and has been able to leverage small amounts of state funds with private donations and grants from the U.S. Commission for the Preservation of America's Heritage Abroad. The Institute is working on plans for a Jewish museum in Warsaw.

improving connections between the town and the ghetto; investing in center city utilities; and encouraging tourism.

Funding so far blends town, Czech, and international sources. It includes 40 million Kc (about \$US 1.3 million) from PHARE (a Council of Europe initiative) for infrastructure investment, and additional moneys from a central revolving municipal investment fund and US AID; 1.64 million Kc (\$US 54,530) from the Ministry of Culture to restore the ghetto synagogue as a cultural center matched by municipal funds for a total of 3 million Kc (about \$US 100,000); 8 million Kc (about \$US 266,000) to build a footbridge from the town center to the ghetto; 4 million Kc (about \$US 133,000) from town funds to restore municipally owned historic buildings and reconstruct a Hussite church. Trebic received 1.7 million Kc (\$US 57,000) in 1994 and 1.5 million Kc (\$US 50,000) in 1995 from the urban regeneration program. The town expects these investments to encourage private owners to fix up their properties. Planning, marketing, and financing are managed by the Trebic Fund, established in 1993. The fund's activities range from printing postcards and aerial posters to sponsoring cultural events to marketing Trebic at international fairs to seeking grants from international funders.³⁷

Lessons

While there are unusual features in these examples, they illustrate important lessons about efforts to rescue the neglected cultural and architectural heritage of ethnic and religious minorities.

³⁷ Trebic Fund, *Annual Report 1995*, and letter from Stuart W. Bass, Peace Corps Adviser to the Town of Trebic, Feb. 1, 1996.

Involve minorities in the dialogue about what monuments are important and how they should be managed

It is essential to involve academic, professionals, and others from the groups whose cultural legacy the resources represent in documentation and stewardship. They have the shared memory the most at stake. Involvement also has other benefits. As an American preservationist has observed, fostering cultural diversity in monuments preservation goes beyond numbers of projects to the very process whereby "cultural groups associate what resources are important to them, how the resources should be protected, and who should be empowered with the management of the resources."³⁸ At the same time, the involvement of knowledgeable and committed partners from outside of the groups need to be welcomed, on both moral and practical grounds. Much of the problem exists because the natural line of property inheritance or sale has been severed..

Leadership

Successful projects are inspired by leaders associated with ethnic and religious minorities who recognize the links between "place" and furthering other central goals: strengthening individual esteem and group identity; protecting and perpetuating the cultural legacy; claiming a rightful niche in the nation's patrimony and history; and educating members and others about heritage.

Do more than save individual buildings

Restoring a single monument can be a very important accomplishment, but the building can remain at risk if located in a stagnating or rapidly developing area. The project's ability to attract funds and partners, the durability of the investment, and the impact on people all are enhanced when the project is part of a larger initiative, such as economic revitalization of a depressed area or a strategy to attract tourism. Officials can invigorate development goals and find new partners, as in Trebic, by understanding and integrating the

³⁸ Lee, CRM, p. 3; and Lee, ed., *Past Meets Future: Saving America's Historic Environments* (Washington, D.C.: National Trust for Historic Preservation, 1991).

community's distinctive assets in their plans. Advocates for saving distinctive heritage need to be involved in efforts to strengthen monuments preservation laws and educate citizens about the importance of authenticity in monuments policies.

Be patient

The legacy of mistrust on cultural policies will take time to overcome. Cultural groups may not leap at first at an invitation to be involved in documentation: they may have other priorities, lack the time and resources, or perceive disdain or disinterest in some officials. They may fear being co-opted. Roma leader Gheorghe, critical of what he sees as "subsidized folklore programmes in place of civil rights," observes that state involvement in cultural policies can give "state agencies more power to define and control those communities." Communal leaders may fear being given responsibility for badly deteriorated buildings and sites without the resources to restore them.

SENSITIZING INTERNATIONAL ASSISTANCE TO ISSUES OF MONUMENTS PROTECTION AND CULTURAL DIVERSITY

European, bilateral, and international programs for monuments protection have been fragmented and poorly funded

Language in a stream of documents issued by international agencies affirms the value of the shared, irreplaceable cultural heritage of Europe and of diversity. The European Communities Treaty commits member states to contribute to "the flowering of [their] cultures" while respecting national and regional diversity and the common cultural heritage of Europe, and in 1992, the Council of Ministers approved language on "continu[ing] the concept of cultural heritage protection ... by identifying heritages that are inadequately protected or not even protected at all."³⁹ Yet resources to implement these commitments to cultural heritage in general and diversity in particular as exemplified in the built environment have been limited and fragmented. Monuments protection has tended to be isolated from the main arenas where decisions about development and money are made. There are, however, promising examples of change.

While no ready inventory of monuments restoration projects or programs assisted by international organizations was identified during the reconnaissance, a number of examples surfaced that illustrate several types of assistance given to this aspect of cultural heritage in the region. These provide insights about the potential for more productive linkages between cultural heritage protection and development.

UNESCO's World Heritage program has been helpful in the region. Several recognized sites have multi-dimensioned heritage, and planning teams financed by the Council of Europe have supplemented UNESCO's small purse with studies in Telc, the Czech Republic; Banska Stiavnica, Slovakia; and Krakow, Poland. The Council of Ministers selected religious heritage several years ago as its annual theme for grants. One of its

³⁹ Council of Europe, Third European Conference of Ministers Responsible for the Cultural Heritage, Malta, 16/17 Jan. 1992.

awards is helping to finance the restoration of the nineteenth-century Tempel Synagogue in Krakow, a project of the World Monuments Fund's Jewish Heritage Council managed by Janusz Smolski, former conservator of Krakow. The city of Krakow, private foundations, including the American Ronald S. Lauder Foundation and Getty Grant Program, and private donors have provided additional funds to restore this important remnant of a vital element in the city's cultural heritage. Prozna Street, a surviving remnant of the tragic Warsaw ghetto, is being restored in a new collaboration of the World Monuments Fund's Endangered World Heritage program and the Jewish Renaissance Foundation, which is supported by Mr. Lauder. Also, the European Union, through its urban program, funded a comprehensive action plan for Kazimierz (now a district of Krakow) in Poland, which is commendably focused on conservation of its distinctive Christian-Jewish architectural diversity and legacy of "harmonious co-existence."⁴⁰

Responding to growing concern about the vulnerability of Europe's cultural heritage, and also the opportunities in the post-Communist era, in 1995 the European Parliament adopted the Raphael program to provide broad assistance for cultural heritage protection. This multi-pronged initiative promises support for documentation, education, involvement of voluntary groups and the "underprivileged," and also restoration. (Poland and the Czech Republic are eligible for assistance under this program.) Raphael anticipates spending 67 million ECU's, or about \$US 82 million, over a five-year period for these purposes.⁴¹

More potent assistance for cultural heritage protection could be available from international programs and development banks with sizable funds to assist the transitional economies of Central and Eastern Europe, such as the European Bank for Reconstruction and Development (EBRD), PHARE, and the World Bank. Environmental assessments for these agencies have been improved to help ensure that the projects "do no

⁴⁰ European Union, *Kazimierz Action Plan*, an ECOS-Funded Project Carried Out by the Cities of Krakow, Edinburgh, and Berlin, 1993-94.

⁴¹ European Parliament Session Document, Report on Establishing a Community Action Programme in the Field of Cultural Heritage - RAPHAEL, PE 212.770/fin, Sept. 28, 1995.

harm." There is considerable potential to go further and provide positive assistance to restoration projects that are elements of larger projects to develop or revitalize older areas.

An example of promising change is PHARE's financing to upgrade inner-city infrastructure in the Czech Republic's City of Trebic. This project responds to locally defined priorities to revitalize the historic ghetto in the town center. Also, the World Bank has invested in projects to clean up air pollution in Krakow, in part motivated by the corrosive effects on the city's rich historic treasures, and is exploring a project in Vilnius, Lithuania to upgrade the physical structures and infrastructure of this culturally rich and diverse city. The Bank is also investing in rehabilitating the public infrastructure of St. Petersburg, Russia, where EBRD is helping to finance a private development to restore a centrally located eighteenth-century landmark for offices and retail use.

These international lenders are financing economic development, not restoration per se. More typically, development projects have involved new areas. Officials may be reluctant to tackle the complex and unfamiliar issues of redevelopment in ancient urban centers, including legal proscriptions on changes to historic buildings and transformation to new uses. Given the recognized importance of conserving basic natural resources, such as water supplies and agricultural and forest lands around existing settlements, it is essential to give more emphasis to the redevelopment option. The experience of major lenders in dealing with this challenge will also provide needed lessons and guidance for others.

The difficulty of compiling information about potential resources and programs to assist cultural heritage planning and implementation is likely an impediment to access for projects of interest to cultural and ethnic minorities.

More specific links are needed among human rights, cultural diversity, and monuments protection

Texts approved at the various European and international meetings on minority rights or cultural heritage include little in the way of specific language linking minority rights to monuments protection, although there are general pronouncements on the rights of persons belonging to minorities "freely to express, preserve, and develop their ethnic, cultural, linguistic or religious identity and to maintain and develop their culture in all aspects."

An interesting exception is Article 59 of the Vienna Concluding Document of 1989, approved by the participating states of the Commission on Security and Cooperation in Europe (CSCE) which committed signers to ensure that persons belonging to national minorities or regional cultures on their territories can maintain and develop their own culture in all its aspects, *including [taking steps to] preserve their historical monuments and objects.*" (Italics added). At a symposium on cultural heritage organized by CSCE in 1991 as a follow-on to the Vienna document, several invited experts from the United States discussed the American free-market experience in recognizing, protecting, and financing cultural diversity in monuments preservation.⁴²

Although since sidetracked by the complex political changes swirling in Central and Eastern Europe at the beginning of this decade, the issues posed by the connections between human rights and monuments preservation merit revisiting by CSCE.

Multi-dimensioned heritage should be protected in restitution, title clearance, and privatization

Discussions over return of properties illegally seized from owners by Nazis and/or Communists are underway in all three countries. Many of the issues involve minorities in Central and Eastern Europe. While many

⁴² Samuel Gruber and Ann Hitchcock, Commission on Security and Cooperation in Europe, *Cracow Symposium on the Cultural Heritage of the CSCE Participating States*, 1991.

aspects of the restitution issue are beyond the scope of this paper, the implications for cultural heritage deserve mention.

Special attention to historic/cultural values is needed in restitution, title clearance, and privatization processes. Transfer and privatization should be seen as an opportunity to conduct cultural/historic environmental assessments and to design conditions and incentives to protect these values as buildings are restored or modified.

Certainly there are already many examples where restitution is having a positive effect on the preservation of diverse historic properties. The process is spurring individuals and groups to document properties as a basis for claims. It is returning communal properties to the care of community representatives who have a special interest in them. Sometimes, although not as often as one would hope, the properties have revenue-raising potential. Communities fear being strapped with long-neglected properties and being unable to care for them.

The Lutheran Church in Banská Štiavnica has regained a number of buildings and extensive lands donated by members over the years. Now a partner in development projects in town, it has a fifty-year lease with a developer who will transform the former Evangelical Lyceum building into a hotel academy, and an agreement with a young church member who will live rent-free in exchange for renovating the apartment with his own labor and funds. The Plzeň Jewish community has a ten-year lease with favorable terms with a pharmacy that helped to renovate the community's recently restituted building, which is nicely situated in the center of the city.

Overall, it is unclear how effectively cultural/historic values are being assessed and what types of assurances for owner protection are or could be crafted as properties are transferred in the restitution and privatization process. In contrast, the importance of effective environmental assessments when properties are privatized is

recognized as a major challenge. According to a recent report from the Environmental Law Institute (ELI), for example, "The relationship between privatization and environmental protection [is] one of the most discussed environmental issues in Central and Eastern Europe."⁴³ While statutes requiring environmental assessments for natural resource impacts may include provisions for cultural resources, this varies from country to country as does the expertise in this area of officials who are assigned to do the assessments.

One concern, of course, is that focusing on issues of compliance with environmental regulations will be counterproductive and impede the process of economic restructuring. ELI argues, in the context of natural resources, that environmental protection is inextricably linked to a desirable economic outcome for privatization.

In the United States, the selling of foreclosed properties by the Resolution Trust Corporation is an example of integrating environmental assessments into a program whose mission was to sell off these properties at the highest price as quickly as possible. At first ignored, and then reluctantly included in the process, environmental assessments of properties for sale has since been recognized as an appropriate step to ensure protection of the public interest as well as to maximize opportunities for beneficial gain from appropriate use of environmentally significant properties.

Ethnic and cultural tourism, a growing niche in global tourism, provides a powerful economic incentive for protecting minority sites

Because so many millions emigrated from Central and Eastern Europe to the United States and other parts of the world, there are ample opportunities, in most cases just beginning to be realized, to increase "roots" travel. Although most persons interested in protecting and revitalizing sites associated with minorities are motivated

⁴³ "Privatization and Environmental Protection: Reducing Investor Uncertainty and Protecting the Public Interest," Draft Working Paper prepared by the Environmental Law Institute's Environmental Program for Central and Eastern Europe, Sept. 1995.

by religious, cultural, architectural and historic values, the ethnic travel market provides an important economic incentive to international lenders, ministries, and business leaders to support efforts on behalf of protecting and enhancing multi-dimensioned legacy, including assuming a share of costs of restoration and upkeep and encouraging travelers to contribute funds for these purposes.

Certainly, the economic impact of Prague's Jewish Museum has been a powerful influence throughout Central and Eastern Europe. Poland's official travel brochures have begun to emphasize Poland's varied, multi-ethnic heritage. To be successful in attracting "roots" travel, country motivations need to go beyond economics, since poorly conceived experiences will be counterproductive. Countries that are making a serious effort to grapple with the past as a window into the present and future will find today's increasingly sophisticated traveler responsive.

The many static regional and ethnographic museums established under Communism provide special opportunities for partnerships in cultural tourism. These resources await a new community mission, and well-designed initiatives could attract visitors to regions, smaller towns, and the countryside. In addition to the value of such venues for overseas travelers, they are important resources for educating schoolchildren and adults within the country about local and regional heritage. Ultimately, it is this citizen awareness, fostered by education and community dialogue and heightened by experiences associated with place, which will determine the future of the legacy of monuments associated with ethnic and religious minorities, especially where the erstwhile advocates are no longer present on a day-to-day basis.

3. RECOMMENDATIONS FOR FOLLOW-ON ACTIVITIES

3. Recommendations for Follow-on Activities

Re-establishing national identities in Central Europe has been accompanied by a surge of interest in rediscovering and redefining the physical legacy of past centuries, and finding ways, through law and practice, to protect it under new circumstances. Yet change is often not as fast as it might be, while the pace of development has quickened. Owing to actions that are uninformed or purposeful, continual flux in local governance and responsibilities, slashing of public budgets for restoration, and the need to attract private investment, this legacy is at risk in Central and Eastern Europe.

One goal of this reconnaissance was to develop recommendations for follow-on activities and to distribute the report to organizations and individuals who are influential in the cross-cutting issues involved in protecting monuments and sites associated with diverse peoples as part of broader cultural heritage protection and urban revitalization strategies. Several of these ideas are discussed briefly below, in hope that they will stimulate discussion and action involving a broader group of players than has been the case up to now.

Share information on evolving monuments laws and practice and the implications for saving the legacy of pluralism in Central Europe

Given the dearth of information and growing interest, more comprehensive information needs to be shared among officials and growing private constituencies on evolving monuments preservation law in Central Europe and its implications for multi-cultural values. Legal professionals, monuments officials, representatives of nongovernmental organizations, and others will benefit from opportunities to share experience and insights on key topics affecting the evolving legal and economic context for preservation and special issues in protecting minority heritage. These could include sharing methods of documentation, harmonizing planning and monuments preservation at the national and local levels, attracting private investment for monuments protection, developing tools for negotiated settlements, conducting environmental

assessments, integrating natural and built environmental assets in historic town and landscape protection, and involving the public in ways that foster productive, active constituencies for preservation.

A publication on these issues prepared in collaboration with country experts and ethnic/religious minority advisers could be very useful. In conjunction with such a publication, or as a stand-alone activity, a symposium on evolving preservation law and pluralism in Central Europe should be convened at a suitable site (Mikulov, the Czech Republic, or Krakow, Poland, for example). Translation of legal documents into English as well as other languages was recommended by country professionals as important in their efforts to form partnerships in the region and abroad.

Also, a clearing house on monuments preservation law in the United States on Central and Eastern Europe would be helpful to academics, development banks, nonprofits, business leaders, and others. The English texts of laws collected in the course of this reconnaissance are being deposited in the library of the Central and Eastern European Program of the Environmental Law Institute (which operates such a clearing house for legal documents related to natural environmental actions), the Law Library of Congress, and US/ICOMOS.

Spur documentation with involvement of affected cultural groups

It is important to step up the pace of documenting special sites, and to involve community sages with special knowledge and experts. For maximum impact and credibility, these surveys need to be conducted locally or regionally within the framework of a systematic overall research methodology, and also in most cases seeded with country and international funds and support. The surveys sponsored by the U.S. Commission for the Preservation of America's Heritage Abroad present an excellent model. Here, small grants to expert country teams, highly leveraged with in-kind and other matching resources, have pulled together documentation which is being used to inform private groups and also government actions to protect monuments. An important benefit of these grants is that they identify professionals and other experts with unique country information,

and help them be more effective advocates and researchers in their countries. Similar matching grants programs for documentation could be sponsored by international organizations, such as the Council of Europe and Commission for Security and Cooperation in Europe, or foundations, such as the Open Society Fund.

Improve linkages between monuments protection, planning for sustainable communities, and infrastructure investment

Major investment and development projects can rescue cultural heritage, or threaten it. They can reinforce efforts to revitalize existing towns and villages, or encourage development on the fringes and drain centers of their vitality. Energy, communications, highway and road construction, water, sewerage and sanitation projects are particularly prone to triggering negative impacts on cultural heritage, the World Bank has observed in a recent publication which advises careful documentation, assessment, and mitigation in planning these projects.⁴⁴

A number of efforts are now underway to help countries in Central and Eastern Europe finance needed infrastructure. Country and external fiscal experts, multilateral development banks, and private international investors understandably emphasize the fiscal viability of a loan. Although country laws now call for environmental assessments and the various participating institutions have procedures for assessing environmental impacts, the adequacy of these reviews varies. Effects on cultural heritage are not always part of this assessment or as seriously considered as those on natural resources. Further, the process is generally described as "neutral" about the impacts of these investments on urban development patterns which could weaken older centers, along with their historic resources, by fostering development on the fringe which also destroys valuable resource lands.

⁴⁴ World Bank, *Cultural Heritage in Environmental Assessment*.

Efforts to integrate such physical planning considerations into the quantitative analyses guiding the financing of public infrastructure in the United States face similar skepticism about injecting subjective criteria into what should be an objective process. Municipal bond raters are finding, however, that careful planning by communities to manage conversion of agricultural, habitat, and forest lands to urban settlement is related to long-term fiscal stability. They recognize that growth triggers needs for infrastructure investments -- for education, roads, utilities, and the like -- and if conversion is too rapid, it can adversely affect communities' ability to repay the debt incurred to finance these capital investments.⁴⁵ It is essential to bring this dialogue to the places where major infrastructure investments are being examined and approved.

Increase professional exchanges/internships/training in preservation law and heritage area management, marketing, and interpretation

The usefulness of carefully designed professional exchange and internship programs emerges clearly from this reconnaissance. A number of persons interviewed commented on the catalytic impact of such opportunities offered early in their careers.

Exchanges to help strengthen government's legal expertise in the area of monuments protection should be one priority. The American experience in restoring, financing, and re-using historic buildings and protecting districts was often mentioned as particularly relevant in the new era of market-driven investments.

Participants could include mid-level officials and promising students just completing legal studies.

A second priority involves exposure of Central European city and regional monuments professionals and town managers to more models where cultural diversity and heritage have been protected in the context of broader revitalization initiatives. Of special relevance are heritage projects where urban, ethnic, and social history can be explored in the context of industrial history, for example in the Lowell National Historic Site in

⁴⁵ Phyllis Myers, "Bond Raters Impressed by Local Park Funding," *GreenSense* (published by the Trust for Public Land), Vol. 2, No. 1, Spring 1966.

Massachusetts, which highlights the contributions of its historically diverse labor force, and the State Railroad Museum in Sacramento, California, which has sensitive exhibits on the labors of Chinese workers in building the nation's transcontinental railroad. There are other good examples in this country, and in England and Western Europe. The Czech Republic and Slovakia are just beginning to study and register industrial heritage sites, and carefully designed visits, or longer professional internships, could provide seminal experiences for eager young and mid-level monuments protection, planning, and museum professionals.

Develop a primer on European, American, and international sources of financial and other assistance for cultural heritage

A comprehensive sourcebook on the various sources of in-country and external funds, technical assistance, and other potential support for preservation planning, restoration, and related efforts is lacking. There are, in contrast, a number of publications that provide this type of information for natural environmental activities. Such information is especially important to increase access by cultural and ethnic minorities. Although the dearth of available resources may account for a reluctance to publicize programs, such an effort could increase awareness of opportunities and the enormous needs, and lead to enlarging the funding pie.

Investigate the ethnic travel market, understand and foster its linkages to place and history, and develop financial linkages between homelands and descendants abroad

There is little systematic knowledge about the ethnic/religious "roots" travel market, although it is clearly relevant to the protection of historic and cultural sites in Central and Eastern Europe. Travel literature by the Czech and Polish governments already highlights their attractions to multi-ethnic groups, but there is little statistical information on the market and fiscal impact to guide advocates. It could be very useful to systematically collect and analyze information about "heritage" travel in Central Europe and elsewhere (Armenians to San Lazzaro Island, Venice, for example, and Irish to Ireland, church pilgrimages, and so on), and also to gain insights from the experience of the eco-tourism industry. To what extent have conservationists succeeded in tapping profits to fund environmental restoration and also boost local

economies? Solid information is needed about the heritage market, how it can foster financial and other linkages to supporters abroad, and the role of friends groups and community foundations in spurring authentic resource-based travel experiences.

APPENDICES

Profiles of Monuments Preservation Laws

POLAND

Poland's Law on the Protection of Cultural Property, enacted in 1962 and amended in 1990, has been praised as one of the most comprehensive approaches to preservation in Europe.⁴⁶ The country's large cadre of conservation, planning, architecture, and design professionals enjoys a high degree of respect within Poland and throughout the international community for the quality of their training and professional commitment.

The fall of Communism revealed shortcomings in Poland's legal system for protecting monuments and a selective view of the national patrimony. While there were notable successes, there was also incalculable destruction of monuments and distinctive town centers and rural landscapes. Moreover, apart from selective restorations and documentation, little attention was given to the country's multi-religious and multi-ethnic architectural and cultural heritage, a combined result of traditional preservation values and Communist ideology.

The Legal Framework

Poland's monuments protection law covers both movable and immovable objects, the natural and manmade environment, and larger urban and rural settings as well as individual buildings. The law specifies the types of properties eligible for monuments designation and provides for a system of legal authorities, administrative entities, reviews, and subsidies aimed at safeguarding the national patrimony. No project to alter, renovate, reconstruct, preserve, rebuild, or excavate a monument can proceed without a permit from the regional representative of the state, the voivodship conservator. The effects of development on listed monuments must be considered in all regional and local plans. Owners of historic monuments are eligible for subsidies towards renovation costs. The law provides for documentation and research when necessary to consider development proposals, and for stop orders, penalties, and confiscation for non-compliance.

Ministry of Culture and Arts

The Minister of Culture and Arts has overarching responsibility for monuments protection policies, including procedures for listing and de-listing properties and budgets. The chief conservator, who reports to the minister, is the highest ranking monuments protection official.

Within the ministry, several divisions reporting to the chief conservator are responsible for monuments documentation and coordination of registers; archaeological sites, historic parks, gardens, and cemeteries; and compliance. The board for conservation and protection of palaces, gardens, and cemeteries includes representation of each minority religion, as well as professional experts, voivodship conservators, and state preservation officials. Responsibility for compliance, a new function since 1991, is housed in the State Service for the Protection of Monuments.

Voivodship Conservators

Under Poland's distinctive system, state-appointed voivodship (regional) conservators of monuments serve in each of the country's 49 voivodships. Under the law, conservators determine what properties are listed, issue permits for restoration, review completed projects, and allocate state preservation assistance grants. Their

⁴⁶ See *Law on the Protection of Cultural Property and on Museums* (Warsaw: Historical Monuments Documentation Center, 1992). Much of this section draws on a chapter on historic preservation by Myers in *Survey of Jewish Monuments in Poland*.

decisions may be appealed to the Minister of Culture and Arts, whose decision is final. In a trend not yet adequately addressed in law, the post-Communist shift to independently elected local governments has modified, and arguably weakened, the voivodship conservators' role. While conservators' legal authority over registered monuments is solid, their influence is limited in practice by small budgets and local governments' planning and development authority and access to tax revenues. The voivodship conservators' role is advisory on changes to buildings which are important to the historic and cultural fabric of towns, cities, and landscapes, although not listed individually.

Register Listing

There are some 41,520 listings of "immovable" monuments: half owned by the state and municipalities, and about a quarter each by religious institutions and private owners. The number has increased by over ten per cent since 1990. Eligible properties include any "ancient or contemporary object, which is important in terms of the cultural heritage and cultural development on account of historical, scientific or artistic value." The law provides for the designation of historic districts, cemeteries, ethnographic sites (such as typical groups of villages), historic battlefields, sites connected with the struggles for independence and social justice, concentration camps, technological development, and sites associated with eminent authors and politicians. The 1990 amendments added "heritage landscapes" and a new category, "monuments of national history," to recognize Poland's most precious monuments.

Listing may be proposed by the voivodship conservator, the Minister of Culture and Arts, or the property owner. Each voivodship maintains a register of listings in the territory, with backup documentation. Listing does not require the owner's permission or a clear title. Centralized information is being collected in the dozen regional documentation centers and in Warsaw. Municipalities may also have their own registers of historic properties. Nominations are evaluated for their architectural, historic, and scientific importance by expert committees, with the assistance of the Polish Academy of Sciences.

Monuments of History

The 1990 amendments added a new category of recognition, "monuments of history," representing the nation's most significant sites. In 1994 the Polish Parliament approved legal boundaries for monuments of history in fifteen cities and towns, including Krakow, Warsaw, Kazimierz Dolny, and Wroclaw. Although these areas' special significance has been recognized for some time, this is the first time boundaries have been set by national law. Implementation, including sensitivity to multi-ethnic and multi-religious sites, depends on incorporation of these zones, with their combination of individually listed and contributory properties, into local plans developed with the voivodship conservator.

Ethnic and Religious Minorities

Contentious issues have arisen with respect to documentation and protection of historic, religious, and cultural sites associated with ethnic and religious minorities. Many were devastated and ruined under Communism, especially those associated with former Jewish and German owners who were no longer present -- for very different reasons. In the 1980s the Citizens Committee for the Protection of Monuments played an important role in documentation and advocacy for Jewish, Ruthenian, and other minority sites. Official documentation was sporadic, but began to increase, especially for Jewish sites, towards the end of the decade and the beginning of the 1990s, assisted by experts in various research institutes in Warsaw, Krakow, Wroclaw, and other cities. Shifting boundaries and postwar expulsions and flight led to abandonment and devastation of formerly German-owned properties, including Lutheran churches. Here too, documentation, listings, and some restorations have increased since 1990.

Financing

State subsidies for approved restoration plans -- up to 23 percent of project costs -- are contemplated in law but constrained in practice. A Church Fund, administered by the Board of Denominations in consultation with conservators, provides grants from a small budget for restoring religious buildings with recognized historic values; about 15 percent was granted to non-Catholic buildings in 1994.

While cities and towns have direct access to tax revenues, local contributions depend on the vigor of the local economy, competing needs, and community interest. Although no overall information is available on local contributions to monuments protection, informed observers believe that municipalities are not making significant contributions.

Krakow has a unique state budget line, the National Fund for Krakow Monuments Restoration, established in 1978 in recognition of the city's status as a World Heritage Site. Since 1990 the fund, managed by a committee of officials and private experts, has assisted a number of secular and religious restorations, including in recent years several synagogues and adaptive re-use of a nineteenth-century prayer house, financed also by the Polish-American Commission for Humanitarian Aid.

Private foundations from abroad have helped finance important minority restoration projects, including the Ronald S. Lauder Foundation and the Getty Grant Program, and also international organizations, such as the European Union and UNESCO, for example in Krakow, under programs to protect Europe's common cultural heritage.

THE CZECH REPUBLIC

The foundations of preservation and planning policies in the Czech Republic, laid in the nineteenth and early twentieth centuries, reflect Austro-Hungarian influences.⁴⁷ Political and economic sea changes since the last major statute was approved in 1987 have triggered extensive efforts to craft a new statute that would eliminate references to Communist ideology and obsolete regional and local institutions and create a modern, accountable protection system responsive to decentralized government, private investment, and private property, and also foster a citizen constituency for preservation.

The Statutory Framework

The basic law governing historic preservation in the Czech Republic today was enacted in 1987. This amended a 1958 statute that established a system for documentation and registration of cultural monuments, state oversight, and training for professionals and artisans. The 1987 amendments expanded this general framework for designating cultural monuments and added provisions on historic reserves and zones. The Minister of Culture proclaims cultural monuments in consultation with regional officials and, for archaeological sites, with the Academy of Sciences, and oversees state and regional institutes for monument preservation.

Institutions

In the post-Communist era, a cultural heritage protection program has been organized in the Ministry of Culture, under the direction of Kamila Matouskova. A key official in the ministry, Deputy Minister Zdenek Novak, is a conservation professional whose prior post was director of the regional institute in Brno. The State Institute for the Preservation of Historic Monuments provides technical and scientific advice and assistance through a system of nine regional institutes -- Prague, Central Bohemia (Prague), Western Bohemia (Plzen), Southern Bohemia (Ceske Budejovice), Northern Bohemia (Usti nad Labem), Eastern Bohemia (Pardubice), Southern Moravia (Brno), and Northern Moravia/Silesia (Olomouc and Ostrava).

The regional institutes maintain a list of regional monuments, recommend new listings on the basis of research and documentation studies, and provide professional advice to property owners and officials on documentation and compliance. Owners of listed monuments, and properties in historic reservations or zones, are required to ask for the opinion of the regional institute about any contemplated alterations. Planning and building permits are issued (or denied) by the appropriate district council office. Staff in these 75 offices are appointed by the responsible central ministries. Planning permits require the consent of local authorities, many of whom have taken on larger roles in planning and development, managing protected buildings and zones, and negotiating with developers and owners. They may allocate funds for monuments restoration or devise other incentives.

Register Listing

Cultural monuments are defined as "important evidence of historical development, the way of life and environment of the society from ancient times up to the present, as evidence of the creative abilities and work of Man in the most varied branches of human activity, for their revolutionary, historical, artistic, scientific and technical value," and also as buildings with a direct relationship to important personalities and historic events. The 1987 law provides for naming monument reservations, "a complex of monuments," and a less strict

⁴⁷ Czech National Council Law No. 20/1987. An English translation of the 1987 Czech law appears in "State Care of Monuments," *Bulletin of Czechoslovak Law*, Vol. 27, 1-2 (Prague: Jednote Pravniko, 1988). Much of this section draws on a chapter on historic preservation by Myers in *Survey of Jewish Monuments in the Czech Republic*.

category of monument zones, containing "a lesser share of cultural monuments" or landscapes. These provisions were clarified and strengthened in a 1992 program for the regeneration of historic towns. The law provides for designation by government decree of national cultural monuments representing the "most important part of the nation's cultural wealth."

Listed Monuments

Monuments lists increased from about 34,000 to 38,000 in recent years. This is a net figure, compiled from deletions of landmarks associated with Communist events and personages and the addition of others neglected under Communism, including churches, chapels and monasteries, castles, examples of functionalist architecture, and synagogues. Officials say 40 per cent of the monuments need major reconstruction, and at least half of these are privately owned. Almost sixty properties were added to the list of national cultural monuments and about a dozen deleted, most associated with the Communist years.

Ethnic and Religious Minorities

Under Communism, official policies hostile to historic properties associated with ethnic and religious properties were not apparent to the typical visitor to Prague. Travelers marveled at Prague's Jewish quarter, for example. Yet in 1991 an official of the state monuments office in Prague showed a visitor two thin folders, locked in a cabinet, with scanty information on some 230 Jewish sites. Most entries were dated 1988 or later and classified as having low preservation value, a category that signaled local officials that the fate of these sites was in their hands. "If the sites were world-renowned, they were protected, but others were neglected," a cultural official commented. Today, much more documentation of sites of all kinds underway. Since staffs and resources in government are limited, assistance from nongovernmental sources in the country and abroad has been important.

Financing

Given the devastation of state-owned properties under Communism, many officials today are understandably skeptical of state planning and place a great deal of faith in market decisions and private responsibility as the driving force for rescuing heritage. There is a good deal of debate about the place of subsidies and incentives, and these are increasing as the economy improves. Three state grant programs offer limited assistance to listed monuments. In addition to matching state funds, some towns and cities also are a source of financing for restoration, especially those interested in attracting tourism.

SLOVAKIA

Slovakia's historic preservation statute was approved as a parallel statute to that approved for Bohemia and Moravia in the federated state of Czechoslovakia in 1987. The Slovak Institute of Monuments was created in 1950, the time when systematic study of the cultural heritage of Slovakia began.⁴⁸ Widespread destruction in the 1970s, especially as a consequence of urban renewal in Bratislava, now Slovakia's capital city, and construction of socialist housing blocks in the countryside, preceded the 1987 law and its provisions for documentation, institution-building, and professional development.

Institutions

The Slovak Institute of Monuments is housed in the Ministry of Culture. Both the ministry and other levels of government have experienced considerable change in recent years. Sharp budget cuts have reduced the staff of regional centers and local offices, estimated at 160 in 1994. Bratislava has its own monuments office, which appears to work closely with the mayor's planning and preservation officials.

The regional centers provide professional opinions to county and district offices about proposed alterations to monuments. While, according to a paper by Dr. Katerina Kosova, former head of historic preservation, the law provides for "binding opinions" by regional professionals, others say their advice is advisory, as in the Czech Republic. Permits are granted by a division of the environmental ministry but require the positive agreement of town authorities, who are elected.

Register Listing

The law provides for individual and group listings of a broad range of properties, and covers both movable and immovable cultural monuments. A recent Slovak law defines an immovable cultural property as "any creation of historical, artistic, scientific, technical, or social meaning" and also continues provisions for nominations of historical complexes, historical parks, and sites to commemorate folk traditions, events, and so on.

Listed Monuments

There are 11,732 cultural monuments, a reduction from 12,443 under Communism, according to a 1994 official compilation of statistics on monuments preservation. There are 17 town monument reserves, 10 reservations of folk architecture, 70 monument zones, and 70 national cultural monuments, the category that represents the most important register listings.

Ethnic and Religious Minorities

A law on cultural heritage approved in 1995 defined cultural heritage for the first time in a statute. It seems to expand on language in the Preamble to the Slovak Constitution which separates the development and creative contributions of the Slovak nation from those of various groups who "live on Slovak territory." What this will mean for future documentation of monuments remains to be seen. At this time, minorities express considerable concern about what is seen as a nationalist drift in official policies. While some Jewish sites have been registered as monuments, documentation is very incomplete and funding for restoration minimal. Urban renewal in the 1970s destroyed Bratislava's Jewish town, including two architecturally and culturally significant synagogues, and intruded disturbingly on the city's most important Hungarian cathedral. There are no Roma monuments.

⁴⁸ Slovak Law 27/1987; and Katarina Kosova, "Legislative Strengths and Hurdles in Slovakia," unpublished.

Financing

The main source of state money for monuments preservation has been the ProSlovakia Fund, created in 1991 by the Ministry of Culture. At its high point, ProSlovakia provided 120 million Slovak crowns, or about \$US 4 million, for restoration. The fund was cut to 20 million Slovak crowns, or about \$US 668,000, in 1994. Money for restoration may also be available from a state fund for state-owned properties and from local governments, in addition to private developers.

Interviews in Poland, the Czech Republic, and Slovakia

March 15-31 and August 15-26, 1995

Poland

Officials, Warsaw

Prof. Andrzej Tomaszewski, Chief Conservator, and Faculty of Architecture, Warsaw University of Technology

Tadeusz Polak, Deputy Minister of Culture

Marck Pernal, Director General, Polish Board of Denominations Council of Ministers

Albert Soldani, Chief Legal Adviser, Malgorzata Fokt-Willmann, State Service for the Protection of Monuments, Ministry of Culture

Officials, Krakow

Zbigniew Beiersdorf, City Conservator of Monuments

Andrzej Gaczol, Voivodship Conservator

Janusz Smolski, Conservator, Wawel Castle

Representatives of private groups, professionals, and others

Adam Bartosz, Anna Surmiak, Muzeum Etnograficzne, Tarnow

Jan Jagielski, Eleonora Bergman, Jewish Historical Institute, Warsaw

Monika and Stanislaus Krajewski, Warsaw

Grazyna S. Pawlak, Jewish Historical Institute Association of Poland

Marie and Kazimierz Piechotka (authors, *Wooden Synagogues*), Warsaw

Prof. Jan Pruszyński, Polish Academy of Sciences, Warsaw

Jacek Purchla, International Cultural Centre, Krakow

Yale J. Reisner, Ronald S. Lauder Foundation, Warsaw

Pawel Wildstein, Chairman, Union of Jewish Communities, Warsaw

Jan Zielinski, Polish Fund for the Club of Rome

The Czech Republic

Officials, Prague

Pavel Tigrid, Minister of Culture

Kamila Matouskova, Director, Cultural Heritage Protection, Ministry of Culture

Josef Stulc, Director, State Institute for Protection of Monuments, Ministry of Culture

Vaclav Mendl, Deputy Minister, Ministry of Economy

Alexander Kratochvil, Assistant to the Deputy Minister, Ministry of Economy

Officials, Brno

Zdenek Novak, Director, Regional Institute for Protection of Monuments (now Deputy Minister of Culture)

Jaroslav Josefik, City Architect

Ava Stankova, Town Planning Office

Officials, outside of Prague and Brno

Mayor Pavel Herman, Trebic
 Lubor Herzan, Town Architect, Trebic
 Mayor Frantisek Slama, Boskovice
 Milada Popisilova, Fund for Restoration of Boskovice
 Mayor Zdenek Jelinek, Breznice
 Jan Tydlitat, Conservator, Rychnov nad Kn.

Representatives of private groups, professionals, and others

Dr. Leo Pavlat, Director, Jewish Museum, Prague
 Arno Parik, Jewish Museum, Prague
 Jiri Fiedler, Jewish Museum, Prague
 Jaroslav Klenovsky, Jewish Community, Brno
 Karel Holomek, Brno
 Milena Hubschmannova, Prague
 Jiri Mach, Rychnov n. Kn.
 Jaroslav Kos, Rychnov n. Kn.
 Lubomir Chmelar, Director, Greenways-Zelene Stezky
 Stuart W. Bass, Peace Corps, Trebic
 Laura Keresty, environmental consultant, Prague
 Radim Perlin, Dept. of Social Geography, Charles University, Prague

Slovakia**Officials, Bratislava**

Mayor Peter Kresanek, Bronislav Michalcak, Bratislava
 Ivan Moro, Ministry of Culture
 Frantisek Poredos, Ministry of Culture
 Katerina Kosova, Viera Dvorakova, Slovak Institute for Monuments
 Vladimir Repka, Matica Slovenska
 Peter Kovacik, Ministry of the Environment
 Juraj Zary, Director, PhDr. Jana Bahurinska, Slovak National Gallery

Banska Stiavnica and Kosice

Paolo Fabiani, State Monuments Office, Banska Stiavnica
 Jan Krcho, State Monuments Office, Kosice
 Elizabeth Yenchko-Facinelli, State Monuments Office, Banska Stiavnica

Representatives of private groups, professionals, and others

Jaroslav Franek, Bratislava
 Peter Huncik, Sandor Marai Foundation, Bratislava
 Jaroslav Kilian, Bratislava
 Pavol Mestan, Museum of Jewish Culture
 Klara Orgovanova, Open Society Fund, Bratislava
 Boris Strecansky, ETP Slovakia Foundation, Bratislava
 Irena and Jan Rohac, Bratislava
 Pavol Salomon, Kosice
 Tomas Stern, Bratislava
 Dr. Pavel Traubner, Bratislava

Others (U.S. and international)*

Gustavo Araoz, US/ICOMOS
 Patrick Boxall, Urban Institute
 John Brandolino, CEELI
 Jessica Brown, Atlantic Center for the Environment
 Jose Cremades, Council of Europe
 Stephen Dennis, National Center for Preservation Law
 Hannah Evans, Foundation for a Civil Society
 Fred Kent and Stephen Davies, Project for Public Spaces
 Marianne Ginsburg and Irmgard Hunt, German Marshall Fund
 Samuel Gruber, Jewish Heritage Research Center
 Dr. Grigor Maksoudian, Armenian Diocese
 Thompson Mayes, National Trust for Historic Preservation
 Sybil Milton and Radu Ionid, U.S. Holocaust Memorial Museum
 Andras Roman, Hungarian ICOMOS
 Erika B. Schlager, Marlene Kaufman, Commission on Security and Cooperation in Europe
 John Stubbs, World Monuments Fund
 June Taboroff, Consultant, the World Bank Group

* includes telephone calls and correspondence

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PHOTOGRAPHS

BACK COVER

Upper Row:

Left: Tempel Synagogue, Krakow, Poland. 19th century. Restoration project of the World Monuments Fund financed by the Kress Foundation, Ronald S. Lauder Foundation, Getty Grant Program, European Union, Fund for the Restoration of Krakow Monuments, and other private donors. Photograph by Samuel Gruber.

Right: Former headquarters of Mining Academy, constructed from buildings dating from the Renaissance. Restored two years ago by the state to preserve mining archives. Banska Stiavnica, Slovak Republic.

Middle Row:

Left: Museum of the Hussites, Tabor, Czech Republic. Housed in 16th century Town Hall. Tabor was the center of the Hussite revolutionary movement.

Right: Husova Street, Mikulov, Czech Republic. Ghetto origins date back to 15th century. Restored with regional, private, and Jewish Community of Brno funds. American college students helped clean the ghetto's historic cemetery.

Lower Row:

Left: Ceremonial hall, Jewish cemetery, Hradec Kralove, Czech Republic, 20th century (1930) art deco structure. Jewish Community in Prague is funding restoration. Local Friends of Hradec Kralove and school children helped repair the cemetery.

Right: Public Market, Krakow, Poland. Restored by city. Late 19th century..

PRECEDING PAGE

Upper Row:

Left: "Chalet"-type renovation on central square, Breznice, Czech Republic.

Right: Exhibition photographs contrasting historic building as it looked around 1930, and after "modernization," Boskovice, Czech Republic.

Middle Row:

Left: Gravestone in unmarked Jewish cemetery, Banska Stiavnica, Slovakia. 19th century.

Right: City-sponsored infrastructure project to attract private investment to rebuild Jewish Old Town, damaged during World War II and later leveled, Bratislava, Slovakia. Settlement dated back to 16th century.

Lower Row:

Left: Restaurant adjacent to 16th century Rema Synagogue, Krakow, Poland.

Right: Land parcel with uncleared title, Krakow, Poland.

Photographs by Phyllis Myers, except as noted. Czech notes: Jiri Fiedler, *Jewish Sights of Bohemia and Moravia* (Sefer, 1991).



Resolution B4-1493/95, called "Resolution on the return of plundered property to Jewish communities" was adopted by the *European Parliament* (EP) on December 14, 1995.

The European Parliament,

- A. recalling the first additional protocol to the European Convention on Human Rights (Paris 1952), and in particular Article 1 thereof, which stipulates that 'every natural or legal person is entitled to the peaceful enjoyment of his possessions',
 - B. recalling the European Union's commitment to respect for and defence of human rights,
 - C. recalling the European Union's commitment to the duty of remembrance,
 - D. given the political upheavals in Central and Eastern Europe after 1989,
 - E. whereas certain countries of Central and Eastern Europe which have returned to democracy have ratified the European Convention on Human Rights (1950) by joining the Council of Europe,
 - F. given the twofold plundering of the property of Jewish communities, first under the regimes of the Nazis and their collaborators and then under the Communist regimes,
 - G. aware that under the Communist regimes many other individuals of various origins, communities and religions and many organizations, notably Christian churches, were deprived of their property,
-
1. Welcomes the fact that certain Eastern European states, notably Hungary and Romania, have accepted the principle of justice and morality by agreeing to return the property of Jewish communities to its rightful owners;
 2. Welcomes the fact that certain Central and Eastern European countries have apologized publicly for the crimes committed against Jews during the Second World War and have recognized their responsibilities in respect of these crimes;
 3. Calls on all countries of Central and Eastern Europe which have not already done so to adopt appropriate legislation regarding the return of plundered property so that the property of Jewish communities may be returned to Jewish institutions, in accordance with the principles of justice and morality;
 4. Asks also that all countries of Central and Eastern Europe which have not already done so adopt appropriate legislation for the return of other property plundered by the Communists or the Nazis and their accomplices to their rightful owners;
 5. Instructs its President to forward this resolution to the Council, the Commission, the governments and parliaments of the Member States, the Council of Europe and the countries which have applied to join the European Union.



Simunek, Hastings, Tuzilova and Prochazka v. The Czech Republic, Communication No. 516/1992, U.N. Doc. CCPR/C/54/D/516/1992 (1995).

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31 July 1995
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HUMAN RIGHTS COMMITTEE

Fifty-fourth session

VIEWS

Communication No. 516/1992

Submitted by: Mrs. Alina Simunek, Mrs. Dagmar Hastings Tuzilova and Mr. Josef Prochazka

Alleged victims: The authors and Jaroslav Simunek (Mrs. Alina Simunek's husband)

State party: The Czech Republic

Date of communication: 17 September 1991 (initial submissions)

Documentation references:

Prior decisions

- Special Rapporteur's rule 91 decision, transmitted to the State party on 26 October 1993 (not issued in document form)
- CCPR/C/51/D/516/1992 (decision on admissibility, adopted on 22 July 1994)

Date of adoption of Views: 19 July 1995

On 19 July 1995, the Human Rights Committee adopted its Views under article 5, paragraph 4, of the Optional Protocol in respect of communication No. 516/1992. The text of the Views is appended to the present document.

[ANNEX]

ANNEX

VIEWS OF THE HUMAN RIGHTS COMMITTEE UNDER ARTICLE 5, PARAGRAPH 4, OF THE OPTIONAL
 PROTOCOL TO THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

- FIFTY-FOURTH SESSION -

concerning

Communication No. 516/1992

Submitted by: Mrs. Alina Simunek, Mrs. Dagmar Hastings Tuzilova and Mr. Josef Prochazka

Alleged victims: The authors and Jaroslav Simunek (Mrs. Alina Simunek's husband)

State party: The Czech Republic

Date of communication: 17 September 1991 (initial submissions)

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 19 July 1995,

Having concluded its consideration of communication No. 516/1992 submitted to the Human Rights Committee by Mrs. Alina Simunek, Mrs. Dagmar Hastings Tuzilova and Mr. Josef Prochazka under the Optional Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the authors of the communication and the State party,

Adopts its Views under article 5, paragraph 4, of the Optional Protocol.

1. The authors of the communications are Alina Simunek, who acts on her behalf and on behalf of her husband, Jaroslav Simunek, Dagmar Tuzilova Hastings and Josef Prochazka, residents of Canada and Switzerland, respectively. They claim to be victims of violations of their human rights by the Czech Republic. The Covenant was ratified by Czechoslovakia on 23 December 1975. The Optional Protocol entered into force for the Czech Republic on 12 June 1991 [The Czech and Slovak Federal Republic ratified the Optional Protocol in March 1991 but, on 31 December 1992, the Czech and Slovak Federal Republic ceased to exist. On 22 February 1993, the Czech Republic notified its succession to the Covenant and the Optional Protocol.] .

The facts as submitted by the authors:

2.1 Alina Simunek, a Polish citizen born in 1960, and Jaroslav Simunek, a Czech citizen, currently reside in Ontario, Canada. They state that they were forced to leave Czechoslovakia in 1987, under pressure of the security forces of the communist regime. Under the legislation then applicable, their property was confiscated. After the fall of the Communist government on 17 November 1989, the Czech authorities published statements which indicated that expatriate Czech citizens would be rehabilitated in as far as any criminal conviction was concerned, and their property restituted.

2.2 In July 1990, Mr. and Mrs. Simunek returned to Czechoslovakia in order to submit a request for the return of their property, which had been confiscated by the District National Committee, a State organ, in Jablonec. It transpired, however, that between September 1989 and February 1990, all their property and personal effects had been evaluated and auctioned off by the District National Committee. Unsaleable items had been destroyed. On 13

February 1990, the authors' real estate was transferred to the Jablonec Sklarny factory, for which Jaroslav Simunek had been working for twenty years.

2.3 Upon lodging a complaint with the District National Committee, an arbitration hearing was convened between the authors, their witnesses and representatives of the factory on 18 July 1990. The latter's representatives denied that the transfer of the authors' property had been illegal. The authors thereupon petitioned the office of the district public prosecutor, requesting an investigation of the matter on the ground that the transfer of their property had been illegal, since it had been transferred in the absence of a court order or court proceedings to which the authors had been parties. On 17 September 1990, the Criminal Investigations Department of the National Police in Jablonec launched an investigation; its report of 29 November 1990 concluded that no violation of (then) applicable regulations could be ascertained, and that the authors' claim should be dismissed, as the Government had not yet amended the former legislation.

2.4 On 2 February 1991, the Czech and Slovak Federal Government adopted Act 87/1991, which entered into force on 1 April 1991. It endorses the rehabilitation of Czech citizens who had left the country under communist pressure and lays down the conditions for restitution or compensation for loss of property. Under Section 3, subsection 1, of the Act, those who had their property turned into State ownership in the cases specified in Section 6 of the Act are entitled to restitution, but only if they are citizens of the Czech and Slovak Federal Republic and are permanent residents in its territory.

2.5 Under Section 5, subsection 1, of the Act, anyone currently in (illegal) possession of the property shall restitute it to the rightful owner, upon awritten request from the latter, who must also prove his or her claim to the property and demonstrate how the property was turned over to the State. Under subsection 2, the request for restitution must be submitted to the individual in possession of the property, within six months of the entry into force of the Act. If the person in possession of the property does not comply with the request, the rightful owner may submit his or her claim to the competent tribunal, within one year of the date of entry into force of the Act (subsection 4).

2.6 With regard to the issue of exhaustion of domestic remedies, it appears that the authors have not submitted their claims for restitution to the local courts, as required under Section 5, subsection 4, of the Act. It transpires from their submissions that they consider this remedy ineffective, as they do not fulfil the requirements under Section 3, subsection 1. Alina Simunek adds that they have lodged complaints with the competent municipal, provincial and federal authorities, to no avail. She also notes that the latest correspondence is a letter from the Czech President's Office, dated 16 June 1992, in which the author is informed that the President's Office cannot intervene in the matter, and that only the tribunals are competent to pronounce on the matter. The author's subsequent letters remained without reply.

2.7 Dagmar Hastings Tuzilova, an American citizen by marriage and currently residing in Switzerland, emigrated from Czechoslovakia in 1968. On 21 May 1974, she was sentenced *in absentia* to a prison term as well as forfeiture of her property, on the ground that she had 'illegally emigrated' from Czechoslovakia. Her property, 5/18 shares of her family's estate in Pilsen, is currently held by the Administration of Houses in this city.

2.8 By decision of 4 October 1990 of the District Court of Pilsen, Dagmar Hastings Tuzilova was rehabilitated; the District Court's earlier decision, as well as all other decisions in the case, were declared null and void. All her subsequent applications to the competent authorities and a request to the Administration of Houses in Pilsen to negotiate the restitution of her property have, however, not produced any tangible result.

2.9 Apparently, the Administration of Housing agreed, in the spring of 1992, to transfer the 5/18 of the house back to her, on the condition that the State notary in Pilsen agreed to register this transaction. The State notary, however, has so far refused to register the transfer. At the beginning of 1993, the District Court of Pilsen confirmed the notary's action (Case No. 11 Co. 409/92). The author states that she was informed that she could appeal this decision, via the District Court in Pilsen, to the Supreme Court. She apparently filed an appeal with the Supreme Court on 7 May 1993, but no decision had been taken as of 20 January 1994.

2.10 On 16 March 1992, Dagmar Hastings Tuzilova filed a civil action against the Administration of Houses, pursuant to Section 5, subsection 4, of the Act. On 25 May 1992, the District Court of Pilsen dismissed the claim, on the ground that, as an American citizen residing in Switzerland, she was not entitled to restitution within the meaning of Section 3, subsection 1, of Act 87/1991. The author contends that any appeal against this decision would be ineffective.

2.11 Josef Prochazka is a Czech citizen born in 1920, who currently resides in Switzerland. He fled from Czechoslovakia in August 1968, together with his wife and two sons. In the former Czechoslovakia, he owned a house with two three-bedroom apartments and a garden, as well as another plot of land. Towards the beginning of 1969, he donated his property, in the appropriate form and with the consent of the authorities, to his father. By judgments of a district court of July and September 1971, he, his wife and sons weresentenced to prison terms on the grounds of "illegal emigration" from Czechoslovakia. In 1973, Josef Prochazka's father died; in his will, which was recognized as valid by the authorities, the author's sons inherited the house and other real estate.

2.12 In 1974, the court decreed the confiscation of the author's property, because of his and his family's "illegal emigration", in spite of the fact that the authorities had, several years earlier, recognized as lawful the transfer of the property to the author's father. In December 1974, the house and garden were sold, according to the author at a ridiculously low price, to a high party official.

2.13 By decisions of 26 September 1990 and of 31 January 1991, respectively, the District Court of Usti rehabilitated the author and his sons as far as their criminal conviction was concerned, with retroactive effect. This means that the court decisions of 1971 and 1974 (see paragraphs 2.11 and 2.12 above) were invalidated.

The complaint:

3.1 Alina and Jaroslav Simunek contend that the requirements of Act 87/1991 constitute unlawful discrimination, as it only applies to "pure Czechs living in the Czech and Slovak Federal Republic". Those who fled the country or were forced into exile by the ex-communist regime must take a permanent residence in Czechoslovakia to be eligible for restitution or compensation. Alina Simunek, who lived and worked in Czechoslovakia for eight years, would not be eligible at all for restitution, on account of her Polish citizenship. The authors claim that the Act in reality legalizes former Communist practices, as more than 80% of the confiscated property belongs to persons who do not meet these strict requirements.

3.2 Alina Simunek alleges that the conditions for restitution imposed by the Act constitute discrimination on the basis of political opinion and religion, without however substantiating her claim.

3.3 Dagmar Hastings Tuzilova claims that the requirements of Act 87/1991 constitute unlawful discrimination, contrary to article 26 of the Covenant.

3.4 Josef Prochazka also claims that he is a victim of the discriminatory provisions of Act 87/1991; he adds that as the court decided, with retroactive effect, that the confiscation of his property was null and void, the law should not be applied to him at all, as he never lost his legal title to his property, and because there can be no question of 'restitution' of the property.

The Committee's admissibility decision:

4.1 On 26 October 1993, the communications were transmitted to the State party under rule 91 of the rules of procedure of the Human Rights Committee. No submission under rule 91 was received from the State party, despite a reminder addressed to it. The authors were equally requested to provide a number of clarifications; they complied with this request by letters of 25 November 1993 (Alina and Jaroslav Simunek), 3 December 1993 and 11/12 April 1994 (Josef Prochazka) and 19 January 1994 (Dagmar Hastings Tuzilova).

4.2 At its 51st session the Committee considered the admissibility of the communication. It noted with regret the State party's failure to provide information and observations on the question of the admissibility of the communication. Notwithstanding this absence of cooperation on the part of the State party, the Committee proceeded to ascertain whether the conditions of admissibility under the Optional Protocol had been met.

4.3 The Committee noted that the confiscation and sale of the property in question by the authorities of Czechoslovakia occurred in the 1970's and 1980's. Irrespective of the fact that all these events took place prior to the date of entry into force of the Optional Protocol for the Czech Republic, the Committee recalled that the right to property, as such, is not protected by the Covenant.

4.4 The Committee observed, however, that the authors complained about the discriminatory effect of the provisions of Act 87/1991, in the sense that they apply only to persons unlawfully stripped of their property under the former regime who now have a permanent residence in the Czech Republic and are Czech citizens. Thus the question before the Committee was whether the law could be deemed discriminatory within the meaning of article 26 of the Covenant.

4.5 The Committee observed that the State party's obligations under the Covenant applied as of the date of its entry into force. A different issue arose as to when the Committee's competence to consider complaints about alleged violations of the Covenant under the Optional Protocol was engaged. In its jurisprudence under the Optional Protocol, the Committee has consistently held that it cannot consider alleged violations of the Covenant which occurred before the entry into force of the Optional Protocol for the State party, unless the violations complained of continue after the entry into force of the Optional Protocol. A continuing violation is to be interpreted as an affirmation, after the entry into force of the Optional Protocol, by act or by clear implication, of the previous violations of the State party.

4.6 While the authors in the present case have had their criminal convictions quashed by Czech tribunals, they still contend that Act No. 87/1991 discriminates against them, in that in the case of two of the applicants (Mr. and Mrs. Simunek; Mrs. Hastings Tuzilova), they cannot benefit from the law because they are not Czech citizens or have no residence in the Czech Republic, and that in the case of the third applicant (Mr. Prochazka), the law should not have been deemed applicable to his situation at all.

5. On 22 July 1994 the Human Rights Committee therefore **decided** that the communication was admissible in as much as it may raise issues under articles 14, paragraph 6, and 26 of the Covenant.

The State party's explanations

6.1 In its submission, dated 12 December 1994, the State party argues that the legislation in question is not discriminatory. It draws the Committee's attention to the fact that according to article 11, Section 2, of the Charter of Fundamental Rights and Freedoms, which is part of the Constitution of the Czech Republic, "... the law may specify that some things may be owned exclusively by citizens or by legal persons having their seat in the Czech Republic."

6.2 The State party affirms its commitment to the settlement of property claims by restitution of properties to persons injured during the period of 25 February 1948 to 1 January 1990. Although certain criteria had to be stipulated for the restitution of confiscated properties, the purpose of such requirements is not to violate human rights. The Czech Republic cannot and will not dictate to anybody where to live. Restitution of confiscated property is a very complicated and de facto unprecedented measure and therefore it cannot be expected to rectify all damages and to satisfy all the people injured by the Communist regime.

7.1 With respect to the communication submitted by Mrs. Alina Simunek the State party argues that the documents submitted by the author do not define the claims clearly enough. It appears from her submission that Mr. Jaroslav

Simunek was probably kept in prison by the State Security Police. Nevertheless, it is not clear whether he was kept in custody or actually sentenced to imprisonment. As concerns the confiscation of the property of Mr. and Mrs. Simunek, the communication does not define the measure on the basis of which they were deprived of their ownership rights. In case Mr. Simunek was sentenced for a criminal offence mentioned in Section 2 or Section 4 of Law No. 119/1990 on judicial rehabilitation as amended by subsequent provisions, he could claim rehabilitation under the law or in review proceedings and, within three years of the entry into force of the court decision on his rehabilitation, apply to the Compensations Department of the Ministry of Justice of the Czech Republic for compensation pursuant to Section 23 of the above-mentioned Law. In case Mr. Simunek was unlawfully deprived of his personal liberty and his property was confiscated between 25 February 1948 and 1 January 1990 in connection with a criminal offence mentioned in Section 2 and Section 4 of the Law but the criminal proceedings against him were not initiated, he could apply for compensation on the basis of a court decision issued at the request of the injured party and substantiate his application with the documents which he had at his disposal or which his legal adviser obtained from the archives of the Ministry of the Interior of the Czech Republic.

7.2 As concerns the restitution of the forfeited or confiscated property, the State party concludes from the submission that Alina and Jaroslav Simunek do not comply with the requirements of Section 3 (1) of Law No. 87/1991 on extrajudicial rehabilitations, namely the requirements of citizenship of the Czech and Slovak Federal Republic and permanent residence on its territory. Consequently, they cannot be recognized as persons entitled to restitution. Remedy would be possible only in case at least one of them complied with both requirements and applied for restitution within 6 months from the entry into force of the law on extrajudicial rehabilitations (i.e. by the end of September 1991).

8.1 With respect to the communication of Mrs. Dagmar Hastings-Tuzilova the State party clarifies that Mrs. Dagmar Hastings-Tuzilova claims the restitution of the 5/18 shares of house No. 2214 at Cechova 61, Pilsen, forfeited on the basis of the ruling of the Pilsen District Court of 21 May 1974, by which she was sentenced for the criminal offence of illegal emigration according to Section 109 (2) of the Criminal Law. She was rehabilitated pursuant to Law No. 119/1990 on judicial rehabilitations by the ruling of the Pilsen District Court of 4 October 1990. She applied for restitution of her share of the estate in Pilsen pursuant to Law No. 87/1991 on extrajudicial rehabilitations. Mrs. Hastings-Tuzilova concluded an agreement on the restitution with the Administration of Houses in Pilsen, which the State Notary in Pilsen refused to register due to the fact that she did not comply with the conditions stipulated by Section 3 (1) of the law on extrajudicial rehabilitations.

8.2 Mrs. Hastings-Tuzilova, although rehabilitated pursuant to the law on judicial rehabilitations, cannot be considered entitled person as defined by Section 19 of the law on extrajudicial rehabilitations, because on the date of application she did not comply with the requirements of Section 3 (1) of the above-mentioned law, i.e. requirements of citizenship of the Czech and Slovak Federal Republic and permanent residence on its territory. Moreover, she failed to fulfil the requirements within the preclusive period stipulated by Section 5 (2) of the law on extrajudicial rehabilitations. Mrs. Hastings-Tuzilova acquired Czech citizenship and registered her permanent residence on 30 September 1992.

8.3 Section 20 (3) of the law on extrajudicial rehabilitations says that the statutory period for the submission of applications for restitution based on the sentence of forfeiture which was declared null and void after the entry into force of the law on extrajudicial rehabilitations starts on the day of the entry into force of the annulment. Nevertheless, this provision cannot be applied in the case of Mrs. Hastings-Tuzilova due to the fact that her judicial rehabilitation entered into force on 9 October 1990, i.e. before the entry into force of Law No. 87/1991 on extrajudicial rehabilitations (1 April 1991).

9.1 With respect to the communication of Mr. Josef Prochazka the State party argues that Section 3 of Law No. 87/1991 on extrajudicial rehabilitations defines the entitled person, i.e. the person who could within the statutory period claim the restitution of property or compensation. Applicants who did not acquire citizenship of the Czech and Slovak Federal Republic and register their permanent residence on its territory before the end of the statutory period determined for the submission of applications (i.e. before 1 October 1991) for applicants for restitution and

before 1 April 1992 for applicants for compensation) are not considered entitled persons.

9.2 From Mr. Prochazka's submission the State party concludes that the property devolved to the State on the basis of the ruling of the Usti nad Labem District Court of 1974 which declared the 1969 deed of gift null and void for the reason that the donor left the territory of the former Czechoslovak Socialist Republic. Such cases are provided for in Section 6 (1) (f) of the law on extrajudicial rehabilitations which defined the entitled person as the transferee according to the invalidated deed, i.e. in this case the entitled person is the unnamed father of Mr. Prochazka. Consequently, the persons to whom the sentence of forfeiture invalidated under Law No. 119/1990 on judicial rehabilitations applies, cannot be regarded as entitled persons, as Mr. Prochazka incorrectly assumes.

9.3 With regard to the fact that the above-mentioned father of Mr. Prochazka died before the entry into force of the law on extrajudicial rehabilitations, the entitled persons are the testamentary heirs - Mr. Prochazka's sons Josef Prochazka and Jiri Prochazka, provided that they were citizens of the former Czech and Slovak Federal Republic and had permanent residence on its territory. The fact that they were rehabilitated pursuant to the law on judicial rehabilitations has no significance in this case. From Mr. Prochazka's submission the State party concludes that Josef Prochazka and Jiri Prochazka are Czech citizens but live in Switzerland and did not apply for permanent residence in the Czech Republic.

Authors' comments on the State party's submissions

10.1 By letter of 21 February 1995, Alina and Jaroslav Simunek contend that the State party has not addressed the issues raised by their communication, namely the compatibility of Act No. 87/1991 with the non-discrimination requirement of article 26 of the Covenant. They claim that Czech hard-liners are still in office and that they have no interest in the restitution of confiscated properties, because they themselves benefited from the confiscations. A proper restitution law should be based on democratic principles and not allow restrictions that would exclude former Czech citizens and Czech citizens living abroad.

10.2 By letter of 12 June 1995 Mr. Prochazka informed the Committee that by order of the District Court of 12 April 1995 the plot of land he inherited from his father will be returned to him (paragraph 2.11).

10.3 Mrs. Hastings Tuzilova had not submitted comments by the time of the reconsideration of the merits of this communication by the Committee.

Examination of the merits

11.1 The Human Rights Committee has considered the present communication in the light of all the information made available to it by the parties, as provided in article 5, paragraph 1, of the Optional Protocol.

11.2 This communication was declared admissible only insofar as it may raise issues under article 14, paragraph 6, and article 26 of the Covenant. With regard to article 14, paragraph 6, the Committee finds that the authors have not sufficiently substantiated their allegations and that the information before it does not sustain a finding of a violation.

11.3 As the Committee has already explained in its decision on admissibility (para. 4.3 above), the right to property, as such, is not protected under the Covenant. However, a confiscation of private property or the failure by a State party to pay compensation for such confiscation could still entail a breach of the Covenant if the relevant act or omission was based on discriminatory grounds in violation of article 26 of the Covenant.

11.4 The issue before the Committee is whether the application of Act 87/1991 to the authors entailed a violation of their rights to equality before the law and to the equal protection of the law. The authors claim that this Act, in effect, reaffirms the earlier discriminatory confiscations. The Committee observes that the confiscations themselves are not here at issue, but rather the denial of a remedy to the authors, whereas other claimants have recovered their properties or received compensation therefor.

11.5 In the instant cases, the authors have been affected by the exclusionary effect of the requirement in Act 87/1991 that claimants be Czech citizens and residents of the Czech Republic. The question before the Committee, therefore, is whether these preconditions to restitution or compensation are compatible with the non-discrimination requirement of article 26 of the Covenant. In this context the Committee reiterates its jurisprudence that not all differentiation in treatment can be deemed to be discriminatory under article 26 of the Covenant [*Zwaan de Vries v. The Netherlands*, Communication No. 182/1984, Views adopted on 9 April 1987, para. 13.] . A differentiation which is compatible with the provisions of the Covenant and is based on reasonable grounds does not amount to prohibited discrimination within the meaning of article 26.

11.6 In examining whether the conditions for restitution or compensation are compatible with the Covenant, the Committee must consider all relevant factors, including the authors' original entitlement to the property in question and the nature of the confiscations. The State party itself acknowledges that the confiscations were discriminatory, and this is the reason why specific legislation was enacted to provide for a form of restitution. The Committee observes that such legislation must not discriminate among the victims of the prior confiscations, since all victims are entitled to redress without arbitrary distinctions. Bearing in mind that the authors' original entitlement to their respective properties was not predicated either on citizenship or residence, the Committee finds that the conditions of citizenship and residence in Act 87/1991 are unreasonable. In this connection the Committee notes that the State party has not advanced any grounds which would justify these restrictions. Moreover, it has been submitted that the authors and many others in their situation left Czechoslovakia because of their political opinions and that their property was confiscated either because of their political opinions or because of their emigration from the country. These victims of political persecution sought residence and citizenship in other countries. Taking into account that the State party itself is responsible for the departure of the authors, it would be incompatible with the Covenant to require them permanently to return to the country as a prerequisite for the restitution of their property or for the payment of appropriate compensation.

11.7 The State party contends that there is no violation of the Covenant because the Czech and Slovak legislators had no discriminatory intent at the time of the adoption of Act 87/1991. The Committee is of the view, however, that the intent of the legislature is not alone dispositive in determining a breach of article 26 of the Covenant. A politically motivated differentiation is unlikely to be compatible with article 26. But an act which is not politically motivated may still contravene article 26 if its effects are discriminatory.

11.8 In the light of the above considerations, the Committee concludes that Act 87/1991 has had effects upon the authors that violate their rights under article 26 of the Covenant.

12.1 The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol, is of the view that the denial of restitution or compensation to the authors constitutes a violation of article 26 of the International Covenant on Civil and Political Rights.

12.2 In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide the authors with an effective remedy, which may be compensation if the properties in question cannot be returned. To the extent that partial restitution of Mr. Prochazka's property appears to have been or may soon be effected (para. 10.2), the Committee welcomes this measure, which it deems to constitute partial compliance with these Views. The Committee further encourages the State party to review its relevant legislation to ensure that neither the law itself nor its application is discriminatory.

12.3 Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant or not and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy in case a violation has been established, the Committee wishes to receive from the State party, within ninety days, information about the measures taken to give effect to the Committee's Views.



[Adopted in English, French and Spanish, the English text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]

footnotes

* Made public by decision of the Human Rights Committee.

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